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No. 99-6615

In The

# Supreme Court of the United States

MICHAEL WAYNE WILLIAMS,

*Petitioner,*

vs.

JOHN B. TAYLOR, WARDEN,
SUSSEX I STATE PRISON, WAVERLY VIRGINIA,

*Respondent.*

**On Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Fourth Circuit**

## JOINT APPENDIX
## VOLUME II, PAGES 215 TO 428

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[145] The witness, SPECIAL AGENT J. RICHARD HOLT, having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Good afternoon. Would you give the ladies and gentlemen of the jury, please – and would you speak loud enough all the way back here so this gentleman back here can hear your please, sir? Give them your name, please.

A My name is John Richard Holt, H-o-l-t.

Q And, Agent Holt, are you employed, sir?

A Yes, I am.

Q Where and in what capacity?

A I'm employed by the Virginia State police as a Special Agent currently assigned to the Violent Crimes Investigative Unit.

Q Were you so employed in the first week of March of 1993?

[146] A Yes, sir, I was.

Q Did you have occasion to become aware of where and when the defendant in this case, Michael Williams, was arrested?

A Yes, sir.

Q Where was that?

A That was in Camden County, Georgia.

Q And approximately when was that?

A It was March 4, 1993.

Q As a result of that, did you have occasion to respond down to Georgia to return him to the State of Virginia?

A Yes, sir, I did.

Q Now, let me ask you, how was he transported back to Virginia?

A He was transported in a Cumberland County Sheriff's Office vehicle with Deputy Danny Henshaw and myself.

Q On the way back, did the defendant ask you certain questions?

A Yes, sir, he did.

Q Did you answer those questions?

A Yes, sir, to the best of my knowledge.

Q Did there come a point in time on the way back, while you were in the care when the defendant asked [147] you what did Jeffrey Cruse say to the police?



A Yes, he did.

Q And what did you tell him at that point?

A I told him that Jeff had been interviewed and he had told us the whole story –

MR. FORD: Objection, Judge, to his characterizing what Mr. Cruse says was the whole story. That's conclusary on his part.

MR. VON SCHUCH: Judge, I've asked him simply what he told Mr. Williams.

MR. FORD: I would object to the characterization of the whole story, it implies to the Jury that Mr. Cruse was honest in this particular case, and I don't think that's the case.

MR. VON SCHUCH: Judge, he's not saying what Mr. Cruse said. He's saying what he told him.

THE COURT: He told him Mr. Cruse had told them the whole story. Now, whether or not that's correct or not, we don't know.

BY MR. VON SCHUCH: (Continuing)

Q I'm sorry. Would you go ahead? What did you tell Michael Williams when he asked you that question?

[148] A I told Michael Williams that Jeffrey Cruse had been interviewed and he had told us the whole story, from the time he first met Michael until the last time he saw him.

Q And what did the defendant respond when you told him that?

A Prior to him making another statement, I told him that the .357 Ruger Black Hawk had been recovered by the State Police from the Rappahannock River, and he quickly stated –

MR. FORD: Judge, I want to again object. I think we are getting into hearsay matters now and I'd like to ask –

THE COURT: Hearsay from the defendant?

MR. FORD: Well, I'd like to ask the Court to review what he is going to say, outside the presence of the Jury, to make sure that it's against his penal interest and falls in the exceptions.

THE COURT: All right.

MR. FORD: If the Judge so rules, then he can say that.

THE COURT: Ladies and gentlemen –

(The Jury retired to the Jury room.)

[149] MR. FORD: I appreciate the Court accommodating me.

BY MR. VON SCHUCH: (Continuing)

Q Officer Holt, I think you were just about to the point where you were going to tell us that after you had told Mr. Williams that Mr. Cruse had told you the whole story, and outlined that, would you indicate to the Court exactly what Mr. Cruse (sic) responded at that point?

A He said, "I can prove that Jeff had that goddamn Black Hawk."



MR. VON SCHUCH: That would be all the questions that I have of him concerning Mr. Williams' statements.

MR. FORD: I don't see where that's against his penal interest at this point and I don't think it's admissible.

THE COURT: I think it is against the penal interest that he knew about the Black Hawk gun and so forth, one of the murder weapons.

MR. FORD: All right. Note our exception, Judge.

THE COURT: Bring the Jury in.

[150] (The Jury returned to the Courtroom, and in the presence of the defendant and counsel, the following ensued.)

BY MR. VON SCHUCH: (Continuing)

Q Trooper Holt, there was a point in time on the way back when Mr. Williams asked you a question, "What did Jeff say?" And I believe you had just told the Jury what you had responded to Mr. Williams; is that correct?

A That's correct.

Q What did Mr. Williams say after you made those statements to him?

A He said, "I can prove Jeff had that goddamn Black Hawk."

Q Now, let me show you a jacket.

THE COURT: What exhibit is it?

BY MR. VON SCHUCH: (Continuing)

Q I'm sorry. It's tagged as Commonwealth's Exhibit Number Eleven. I'm going to show you that and ask you if you can identify that, please.

A It appears to be the jacket he was wearing when he was transported back from Georgia to Virginia.

Q That's the jacket he had on when you brought him back?

A I didn't mark it or label it at that time, [151] but it appears to be the same type jacket, same collar, same sleeve, same feel.

MR. VON SCHUCH: That's all the questions I have.

CROSS EXAMINATION

BY MR. FORD:

Q When you said that you told Michael that Jeff Cruse had told you the whole story, that was just your version, right? I mean, you don't know anything about the case other than what – you weren't involved in the case as far as anything else but going down and picking him up; is that right?

A I had interviewed Jeff Cruse prior to going down there.

Q Okay. But you're not trying to tell us that what Cruse was telling you was the absolute truth? You don't know that for a fact, do you?



A No, sir.

MR. FORD: No further questions.

THE COURT: You may step down and you may be excused, sir.

MR. WOODSON: The Commonwealth rests, Your Honor.

* * *

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[165] The witness, MICHAEL WAYNE WILLIAMS, having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. FORD:

Q Michael, would you state your name for the Court and the Jury, please?

A Michael Wayne Williams.

Q How old are you?

A Twenty-five.

Q Have you lived in Cumberland County?

A Yes, sir.

Q About how long have you lived in Cumberland?

A I've lived here, really, all my life.

Q Do you know Jeffrey Alan Cruse?

A I met him like a month before the incident took place.

[166] Q So sometime in January?

A Yes, sir, sometime in January.

Q Directing your attention to February 27th of '93, did you have occasion to be with Jeff Cruse at that point?



A I was at the Lozano residence and we were all sitting around drinking and partying and all.

Q This is you and Jeff Cruse and Mr. Lozano?

A Yeah. I mean, sitting around drinking and smoking pot and getting messed up. Then we left there and we went to a bar in Farmville, J. R.'s Pool Room. I don't know. We drank a lot of beer. I don't know how much. It was a whole lot. And then we left there and we came back and we drank more beer.

Q Came back to where; where did you go?

A To the Lozano residence.

Q And who was with you at that point in time?

A It was me, Jeff, and Albert. I mean, we were sitting around drinking. Me and Jeff went upstairs. We were up there by ourselves talking. I mean, we were sitting there discussing and all that and just talking.

Q Discussing all of what?

A We decided we were going to do a robbery.

Q You decided, you and Mr. Cruse? Were you and Mr. Cruse participating in that discussion?

[167] A Yes.

Q Did Mr. Cruse actively participate or did he not want to do that?

A I mean, he actively participated. And we were sitting there trying to figure out where to go and rob, and I told him there was a store on Bear Creek Road that I knew. I mean, it was in the middle of nowhere and we could rob it. It was my idea to go to the store.

Q Because Mr. Cruse wasn't from this area; is that right?

A Exactly.

Q Who took you there; how did you get there?

A Verena Lozano. We got a ride from her, and she drove me to my house and I got a jacket and put it on and come out of there and got back in the car and I directed her to the end of a dirt road and 622. I don't know the road number of the dirt road.

Q Now, let me back up just a little bit. Did either you or Mr. Cruse have a weapon at this point in time?

A Jeff Cruse had a .357 Magnum Black Hawk.

Q And where did he get that weapon from?

A I gave it to him.

Q Now, you were dropped off by Ms. James; is that correct?

[168] A Yeah.

Q And what did you do? Did she leave?

A She didn't have anything to do with it. She just dropped us off right there. She had her kid with her. I mean, she just dropped us off right there and she drove on. I told her I was going to my uncle's house so she wouldn't think we were going to rob the store. And, I mean, then we walked up there like at the edge of the woods, or really we were in the road. If a car came, we'd like hide from the car so nobody could see us.

Q I understand.



A Well, then we got to the store and as soon as we got to the store, the people were getting in their cars. The lights were out. They were already closed.

Q Who had the weapon; who had the .357?

A Jeff Cruse had the weapon at this time. Then when we left there, we were sitting there. We didn't have a car; we were walking. So we left there and we were walking and we were sitting there. So we said, well, we don't have – I mean, we didn't have a ride, so we just started walking. I know people in the area, because I grew up down in that area.

Q Yes.

A So I figured, well, we could walk this way, because I know people and, I mean, maybe somebody would be [169] home or something and we could stop and get a ride from them. So we were walking or whatever and we got to talking or whatever and we decided that we would rob a house.

Q Who decided that you would rob a house?

A Well, really, we were both.

Q Mr. Cruse actively participated in that discussion?

A Yes, he did. I mean, when we were walking, like every house we got to, all the houses through there are right on the road. So when were walking down the road, we finally got to the Keller residence and their house was way off the road, I mean.

Q Did you know the Kellers?

A I didn't know them personally. I knew who they were. But, I mean, that was the first house we got to that was way off the road and you couldn't see from the road. It wasn't planned to go there. Bear Creek Market was the plan to go to. I mean, it was just that was the house that was off the road.

Q Now, you said that you didn't know the Kellers personally?

A No, sir.

Q But you grew up –

A Right down the road from them. I mean, his brother had picked me up hitchhiking before or something [170] like that, but I did not know them.

Q So you approached the house?

A Huh?

Q Did you approach the house?

A We approached the house and they had a Jeep Cherokee setting in the front yard. We walked up and stood behind that and watched and it was only them two home.

Q Who has the weapon?

A Jeff has the weapon still at this time. We decided that we'd knock on the door and ask to use the phone. So when we got up to the door, we both knocked on the door. And when we knocked on the door, that's when Jeff handed me the gun, and when he handed me the gun, I just took the gun and he said, "I'll walk in first and you walk in behind me." So, I mean, I had the gun in my hand



at this time the .357, and when he answered the door, I said, "Can we use your phone," and he said, "if you'll give me the number, I'll call it for you." Well, when he said that, Jeff walked right in.

Q Just walked in?

A Yes.

Q Did he brush by Mr. Keller?

A By Mr. Keller. Mrs. Keller was standing in the kitchen. She couldn't see us at the time. Then I walked in right behind him and led him to the kitchen where [171] Mrs. Keller was, and I told them both to sit down. And when I told them to sit down, I turned around and Jeff was going back down the hallway to search the house. So he had already started?

A Yes.

Q Had you told him to go? I mean, did you tell him to go?

A I did not tell him. He did all this on his own free will. I didn't make him do anything.

Q All right.

A Then when he went back there, while he was searching the house, he found some .38 shells and he came up there and he asked them, he said where was the .38 at, because he said, "I've got .38 shells here." Then Kippy Keller said, "It's on top of the dresser." It was a tall dresser, so Jeff hadn't seen it. And he said on top of the dresser, so Jeff went in there and got it and come back up there and said, "It's a fully loaded .38." And I said, "Well,

look, that's a loaded gun, a fully loaded." I said, "Let me have that since I'm watching them and you be searching the house back there." So we switched, and so I had a loaded gun, watching them, instead of just two bullets. The .357 had two bullets in it. I gave that to him. So he went on back to the back and was searching the house. While he was searching the house back there, I [172] mean, be searched for about, I'd say, fifteen minutes. And, I mean, like we were talking back and forth, but, I mean, I can't recall the conversation. All it was like, "Have you found anything yet," or something like that.

Q Was he bringing anything into the area where you were with him or was he just –

A No. He was just looking for money. I mean, that's – When be finally came back out, he had the back – The back bedroom had a phone in it and he had the phone cord and he said be was going to tie them up, and he tied Mrs. Keller up first and after he tied her up, he didn't have any phone cord, so he snatched the phone cord off the kitchen phone and he tied –

Q Were they dressed or undressed at that point?

A They were still dressed at that point.

Q When he tied them up?

A When he tied them up, he drug them to the closet right there and he emptied the closet out and he put them in the closet.

Q Now, what was in the closet?

A Them guns and some clothes, and we laid them on the couch in the living room. After we did that, he put



them in the closet. When he put them in the closet, after they were in the closet, tied up, that's when we [173] loaded the truck up.

Q Who got the truck? Is it the Jeep?

A Yeah. Jeff went outside and backed it up to the side door. The house had three doors.

Q Did you have the keys or how did you –

A The keys were laying on the counter to the Jeep.

Q So Mr. Cruse went outside and got the Jeep?

A He got the Jeep, pulled it around to the side and backed up to the door and came back in and then we both loaded the truck down.

Q Did you have the .38 at that point?

A Yeah. I still had the .38 at this point. And, I mean, then we loaded it down. After we was finished loading it down, we came back in the house. And then Jeff Cruse said he wanted to rape her. I said, "It's not a very good idea. DNA will pick it up." I said, "If you rape her, they're going to know who you are," and all that. He proceeded to do it anyway. He went to the closet. He pulled her out the closet and took her to the back bedroom closet.

Q Did you follow him back there?

A No, I did not. I was in the kitchen. Then he came back up front and we were just standing there talking. It's been so long I don't remember the [174] conversation that took place then. We were just standing there talking. Then he went back to the bedroom. I didn't see him rape

her. He said he raped her. I did not go back to the bedroom. They had a picture window like in the front window.

Q What were you doing while he was back there?

A I was standing there watching the driveway in case any cars pulled in.

Q After he got back out, then what happened?

A What was that?

Q After he got back from the back bedroom, then what happened?

A That's when he came back up from the back bedroom with Mrs. Keller, got Mr. Keller out of the closet, untied him, and that's when I said, "Well, let's walk back in the woods and leave them by a creek back there," because I had been hunting back there. I grew up there. I knew there was a creek back there. I said we would leave them by the creek and run back up there and leave and we'd be out of town before they could make their phone call.

Q Now, when you say "leave them by the creek," were you intending to shoot them at that point in time?

A No, we were not. We were going to leave them back there and then run and get in the truck and pull off and we could be away from everything before they called [175] the cops. Then after that, I mean, we got back there. We walked back around behind the house and we stopped. We told her we were going to burn the house down and she said, "Can I get my marriage license?" I told her, I said, I mean, "Yes, you can get your marriage



license," and I walked her back inside and got her marriage license with her and walked her back outside and we walked around behind the house and it was like an air condition unit, like a heat pump thing on the back of the house. We stood there for a minute and I used the bathroom and Jeff did, too, and then we walked them back there in the woods. After we got back in the woods –

Q Tell me how they walked back. Who was first, who was second?

A I was first.

Q You were first?

A Yes, I was.

Q How about Mr. and Mrs. Keller, where were they?

A Mr. and Mrs. Keller were side by side.

Q And where was Mr. Cruse?

A And Mr. Cruse was like a couple of steps behind me. Then we walked back there. After we got back there, we were sitting there. We were, you know, talking or whatever and he mentioned that, I mean, that they'd be [176] witnesses or whatever and, I meant I said, "Yes, they will be witnesses." We both agreed that they'd be witnesses.

Q So Mr. Cruse brought up the fact about witnesses; is that right?

A Yes, he did.

Q Okay.

A I agreed with him after he said it. I mean, we both agreed they'd be witnesses. So, I mean, we come up with the theory to count to three, just like he said, and I counted to three just like he said. And when I counted to three, I shot, and I shot Mr. Keller and he fell to the ground.

Q Let's back up just a little bit. How were you lined up in the thicket, I guess, or the woods?

A I was right here. Jeff Cruse was on my right. Mrs. Keller was in front of him and Mr. Keller was in front of me, just like he said.

Q At that point in time, what weapon did you have?

A The .38.

Q And what weapon did Mr. Cruse have?

A The .357.

Q Did Mr. Cruse indicate any reluctance to do any of this?

A No, he did not.

[177] Q Go ahead. What happened?

A Mr. Keller was right there. When I shot him, he fell to the ground. When he fell to the ground – Well, I mean, it was like bamm, bamm. I mean, it was like both of the guns went off or whatever.

Q Did you have to look at Mr. Cruse to –

A It was like a bamm and when I was turning he was already shooting. I mean, it was bamm, bamm, and



then she fell and they were both laying on the ground. I said, "All right, let me get my gun back," because, I mean, the .357 I had and, I mean, the only reason I'd switched was because I was watching them in the kitchen and I wanted the loaded gun, and I'd switched. I said, "Well, let me get my gun back," and when I got my gun back, while he was pulling my gun, the .38, I mean, out of my hand, when he was pulling it out of my hand, we heard a ruckus, like leaves rattling around, and Mr. Keller was standing back up and be looked at us. And when we turned around, when he was standing up, I jumped back and when I jumped back, that's when Jeff walked forward and I watched his arm raise up, but that's when I backed off. I mean, I heard a shot go off and I heard other shots go off.

Q How many shots; do you remember?

A I do not remember how many shots. I know that the paperwork that I got and all said that seven or [178] eight shots were fired, but I don't know how many shots were fired at the time.

Q You can't remember how many shots were fired?

A Not I don't. Then we got back up on the road and he was loading – he got the shells out the .38 and he was loading it back, because he had a pocket full of shells, and he was loading it back, and he threw the other shells over the fence. And then we walked to the house and when we got to the house, when we walked in, I mean, it was a lamp with fuel in it.

Q Did you discuss with Mr. Cruse on the way back up the road what had happened?

A Really, we were kind of quiet. I mean, we ran up to the house. We got to the house. It was a lamp full of lamp fuel. We decided to burn the house. Well, it was my idea to burn the house down, but he grabbed the lamp fuel and he ran down the hall. I don't know what he put it on back there or nothing. I didn't go back down the hall. I was in the living room. I just took a book of matches and I lit the sofa; I lit the sofa. And he was back in the back. I don't know what he lit in the back. I wasn't back there.

Q But he lit something?

A He lit something. I saw flames and all back [179] there, but, I mean, I didn't go back there to see what he lit.

Q Once the house caught fire, what did you do then?

A We ran out to the Jeep and drove to Fredericksburg.

Q Now, when you were in Fredericksburg – Had you ever been to Fredericksburg before? Did you know anything about Fredericksburg at all, the area?

A That was the first time I'd ever been in Fredericksburg in my life.

Q Why did you go to Fredericksburg?

A He said he had some friends he could sell the stuff to.

Q So why don't you tell the Jury what you did then? Once you got to Fredericksburg, what did you do?



A After we sold the stuff, what we had left, we ended up going – I mean, I didn't know how to get around Fredericksburg. He led me down to that river.

Q You were driving?

A I was driving. I drove down this like dirt road. it was all muddy and I got back in it, because it was four-wheel drive and I wanted to get it way off the road. We got it down off the road by the river. We both lit the truck. I mean, after we got the truck burning – [180] We had pulled all the merchandise that was left out of the truck and after it was burning we carried it to the river and threw it in the river. Then we walked on downstream to the bridge, or ran downstream. I had the .357 at this time. I took the .357 and flung it in the river. He got ready to throw the .38 in the river, but when he got ready to throw the .38 in the river, I said, "Hold it." I said, "Let me have that gun," and he said, "Okay," and he gave me the gun, because it was small and it would fit in my pocket. I put the gun in my pocket. We walked across over to Fredericksburg and went to a bar. We drank a couple of beers. I think it was just one or two apiece. Then we called a taxi, took a taxi to the Greyhound station and caught Greyhound to Richmond. I mean, then we got to Richmond. We didn't pay for the ticket. We ran out of the Greyhound station. We didn't run. We really just, we just walked out. But after we got out of the Greyhound station, I called my brother, Johnny. My brother, Johnny, come to pick me up.

Q Where did he pick you up?

A Well, really, he said he couldn't at the time. He said he had to wait until Mom got home. He was watching my little brother. So I called a taxi and caught a taxi from there over to the Clover Leaf Mall area, down by The Grocery Store. I think that's what the name of the [181] grocery store is, The Grocery Store, or something like that, in Chesterfield. We got up there at that parking lot and while in that parking lot, we waited for Johnny. I called again and Johnny showed up finally to pick us up with Kara Echenrode (phonetic), his girlfriend.

Q Did you still have the .38 in your possession or did Mr. Cruse have it?

A I did.

Q You did?

A Yes, I did.

Q Then what did you do?

A When Johnny showed up, I said, "Johnny, I have something to tell you." And Johnny got out and me, him and Jeff Cruse walked over in the parking lot together and I told Johnny what had happened; me, him, and Jeff Cruse. And after I told him what had happened, he said, "Don't tell me no more." He said, "I don't want to know any more." I lied to him the first time. The first statement I gave him, I lied to him, because I didn't want him to think – I mean, it was my brother and I didn't want him to think that I had been involved in anything like that. So I lied to him the first time I talked to him. I told him a statement that wasn't true. Then we got back to the Lozano's house and Jeff got out and that was the last time I had seen him. We went on back to our house. When



[182] we got to my mother's house, I took the .38 and I threw it in the woods. That's where the gun is now. I threw it in the woods behind the house.

Q At the point in the thicket, you're telling the Jury that you fired how many times?

A One time.

Q And with what weapon?

A The .38.

Q Have you ever been convicted of a felony?

A Yes, I have.

Q How many?

A Two felonies.

Q Have you ever been convicted of a misdemeanor involving lying, cheating or stealing?

A One.

MR. FORD: That's all I have.

CROSS EXAMINATION

BY MR. VON SCHUCH:

Q Mr. Williams, do you know what a Motion to Exclude Witnesses is?

A No, I do not.

Q Have you been watching the trial as we've been going along here?

A What, on T.V.?

[183] Q No, right here in the courtroom.

A Pretty much, I mean.

Q Where have all the witnesses been coming from?

A Outside.

Q So that when the witness came in, they didn't get a chance to hear who testified before them, did they?

A What do you mean?

Q In other words, they were outside?

A Right.

Q So they didn't get a chance to hear who testified before them, did they?

A They did not.

Q And then they would testify and they'd go back out, wouldn't they?

A Yes, sir.

Q So none of those witnesses have heard anything that was said in this courtroom other than what they told this Jury; is that right?

A Right.

Q But that's not true in your case, is it?

A What do you mean?

Q You're the only witness who has sat in here through this trial and heard the testimony of every witness [184] before you got to testify; isn't that correct?



MR. FORD: Judge, I think that's –

THE WITNESS: Well, I had to.

MR. FORD: Excuse me. I think that's improper. He has a constitutional right to be here at all stages of the trial, and it was my Motion to Exclude Witnesses. He's trying to use that fact to convince this Jury that he has been exercising his constitutional rights to stay here and confront all of his accusers and see everybody, and I think that that's improper, I think it's improper.

MR. VON SCHUCH: Judge, I think he's giving me more credit than I'm entitled to.

MR. FORD: I apologize if I have.

MR. VON SCHUCH: I think the Jury ought to have pointed out to them that this witness had occasion to hear all of the other testimony before he testifies. His credibility is in issue and where his story comes from, they have a right to determine and decide.

MR. FORD: But I don't think you can beat him over the head with his constitutional rights. That's certainly a right of his.

THE COURT: Well, he can't beat him over the [185] head, certainly, for being in here, but he can ask him if he heard all the other testimony.

BY MR. VON SCHUCH: (Continuing)

Q And your answer to that question would be yes?

A Yes, sir.

Q Now, I think you've indicated to Mr. Ford you are a convicted felon?

A Yes, sir.

Q Two times?

A I think that's what it is, what my record said. I might be wrong. This is what my record said; that's what I saw.

Q Let me ask you this. You indicated that when you were picked up in Richmond, your brother came and picked you up; is that correct?

A Yes, sir.

Q And your brother's name is Johnny Williams?

A Yes, sir.

Q You indicated that you took him aside, I believe, outside the presence of Mr. Cruse?

A Me, him and Cruse walked over there.

Q Was Mr. Cruse present when you told your brother the first story about what happened?

[186] A Yes, he was.

Q And he didn't say anything?

A He said nothing at all.

Q I believe the first statement that you told your brother was, "All right, first I was told that they had gone in there and that Jeff and Mr. Keller had gotten into a quarrel of some kind and that Jeff pulled out a gun and shot her and shot Mr. Keller and placed the gun on my brother and asked him if he was going to snitch and my brother said no and he said he'd cooperate and then he



helped carry the bodies out into the yard." Is that the first statement you told your brother?

A That's the exact statement I told my brother.

Q And you are telling this Jury that Mr. Cruse was standing there –

A Yes, he was.

Q – while you are putting all this on him and he says nothing?

A Well, Jeff just didn't say anything. He was standing –

Q He didn't say anything, that's my point. He didn't say anything?

A I don't know why. He just stood there. He didn't say anything.

[187] Q It turns out your brother is a little bit smarter though, isn't he? He figured out that that wasn't true and you had to tell him another story, didn't you?

A Well, I told Mr. Ford that I lied to him, because my brother – It's my brother. I didn't want my brother to think I'd been involved in anything like that. I mean, that's what I told Mr. Ford. I did lie to him. On the first statement I lied to him. I didn't want my brother to know I'd been involved in anything like that.

Q Well, let me ask you about this. The second story you told him, did it go something like this? This is when you and Mr. Cruse are in the woods. "At that time they decided they would count to three and pull the triggers so one could not finger something on the other. And they

counted to three and my brother pulled the trigger and shot Mr. Keller in the head. And then Jeff did not pull his trigger at this time and Mike turned around and looked at him and said, 'What are you doing', and he pulled the trigger and fired and he reached over and grabbed the gun out of my brother's hand and shot Mrs. Keller two more times in the head and then reached over and shot Mr. Keller two more times in the head and then they went back to the house and set it on fire."

A I think my brother must have been mixed up on that. I don't remember telling my brother that.

[188] Q You deny making that statement to your brother?

A Yeah. I deny making that statement right there.

Q The .357 that you had in your possession, where did you get that, Mr. Williams?

A Where did I get it?

Q Uh, huh (yes).

A I found it.

Q You found that gun?

A Yes, I did.

Q Where do you find guns like that?

A Where did I find guns like that?

Q Yeah.

A In Prince Edward.

Q Whereabouts in Prince Edward did you find it?



A At a house.

Q Did it belong to somebody else?

A Yes, it did.

Q And did they want you to take that gun?

A I don't think they did. No, they didn't want me to take the gun.

Q So you found the gun at someone's house and took it and they didn't want you to take it and that's [189] where you got the gun?

A They did not want me to take it.

Q And that's where you got the gun?

A Right.

Q And you call being in someone's house and taking their property "finding"?

A What's that now?

Q Do you call being in someone's house and taking their property as a finding?

A (No response.)

Q Is that what you were going to do when you went to the Kellers, find some money and find some jewelry and find a refrigerator; is that what you were going to do?

A I went to the Keller house to steal their money.

Q Now, you have gotten on the witness stand here today and you have sworn to tell the truth; is that correct?

A Yes, sir.

Q You have put your hand on the Bible and you have sworn to tell the truth, as I observed you; is that correct?

A I've sworn to tell the truth. I didn't lay my hand on a Bible.

Q And what you've told this Jury is that Jeff [190] Cruse raped Mrs. Keller; is that correct?

A Yes, sir.

Q And, in fact –

A Well, I didn't see him do it. That's what he told me. I mean, I wasn't back in the room.

Q But you told him not to?

A I told him it wasn't a very good idea.

Q You thought it was a bad idea?

A I told him that DNA would pick it up and it would be a bad idea.

Q And you are telling this Jury that you did not go back in there, and I want to be very clear about this? You are telling this Jury, under oath, having agreed to tell the truth under oath, that you did not go back there and rape Mrs. Keller. Is that what you want this Jury to understand?

A Yes, it is. Yes, sir.

Q How many bullets were there in the .357?

A There were two bullets in the .357.



Q There were two bullets in the .357?

A Yes, sir.

Q When you went out into the woods with the .357, Mr. Cruse had the gun; is that correct?

A Yes, sir.

Q And as you were standing in front of [191] Mr. Keller and he was standing in front of Mr. Keller, he had two bullets in the .357, didn't he?

A Yes, sir.

Q And you had a loaded .38?

A Yes, sir.

Q As I understand your testimony, you both fired at the same time and Mr. and Mrs. Keller –

A I didn't say the same. I said it was like a bamm and then bamm thing, I mean.

Q Pretty much simultaneously?

A Well, really, it was like bamm and while I was turning to look, his gun went off. I mean, it –

Q He shot last?

A Yes, he did.

Q And Mr. and Mrs. Keller went down?

A Mr. Keller fell and then Mrs. Keller fell.

Q Did you all start to leave the woods at that point?

A No. We stood there and looked at him and I said, "Let me get my gun back," and he said, "Okay," and we

were switching. But while we were switching, I had the .357 and this in my hand, but he was pulling it out of my hand, and while he was pulling it out of my hand and it was halfway out, we heard a ruckus in the leaves and all, and I turned around and Mr. Keller was halfway up, staring at us, [192] standing up. And Cruse had his hand on it. He pulled it out of my hand like that. I jumped back and Cruse walked forward. I watched Cruse's hand raise up in the air, but, I mean, I was going back toward the road. I turned around. I heard gunshots go off, but I don't know what happened.

Q Now, is that as true as the statement that you did not rape Mrs. Keller?

A Yes, it is.

Q At the time he jumped up, you both had possession of both guns, is that right?

A What's that now?

Q At the time that Mr. Keller got back up, you both had possession of both guns, in effect?

A No. I said I had the .357 and he was pulling the other one out of my hand at the time.

Q You still had one bullet left in the .357; is that correct?

A Yes, I did.

Q And it's your testimony, Mr. Keller jumping up in front of you, you were not the one that fired that second shot?



A I only had one bullet in the gun and it was still in there when they found the gun.

Q Well, I know. You've heard the testimony of that today, didn't you?

[193] A No, I mean, I was there.

Q Where did you go when you found out they were looking for you?

A Where did I go?

Q Uh-huh (yes).

A I went to Florida.

Q Well, you were caught in Georgia?

A Yes.

Q With Mr. Keller's jacket?

A Yes, I was.

Q You wore his jacket after you had done that to his wife and robbed him and shot –

A The only reason I took the jacket is because, I mean, they wasn't dead yet when I took the jacket. We won't planning on killing them. We were going to leave them in the woods when we went there. We only had two bullets in the gun when we went there.

Q Are you confused about what you did to the Kellers?

A No, I'm not. I said –

Q And you kept his jacket, that's my question, and you wore his jacket?

A The only reason I kept the jacket when we left there was because it was snow on the ground. It was cold and I only had a little thin jean jacket. It was [194] cold.

Q You've indicated, as a convicted felon who has heard all the testimony of all the witnesses in here and who has lied to his brother about this, that this is the absolute truth; is that correct?

A It is the truth.

Q Let me ask you something then, Mr. Williams. Isn't it a fact that if Jeff Cruse had never said a thing, you wouldn't be here on trial?

A That is a fact.

MR. VON SCHUCH: That's all the questions I have.

MR. FORD: No redirect, Judge.

THE COURT: You may step down.

MR. FORD: The defense rests.

THE COURT: Any rebuttal?

MR. WOODSON: No, sir, Your Honor. No, sir.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

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COMMONWEALTH OF VIRGINIA

v.

MICHAEL WAYNE WILLIAMS

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THE HONORABLE JOHN R. SNODDY, JR., PRESIDING

Trial – Day Four
Cumberland, Virginia
January 6, 1994

* * *

[9] THE COURT: Let the record show that all of the Jury is present and in the box; the defendant and his attorneys are present; and the Commonwealth's Attorneys are present.

Now ladies and gentlemen, as I told you before, you have heard all of the evidence and now the Court will instruct you as to the law that you will apply to the evidence that you have heard.

The Court instructions the Jury that the defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require

proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is [10] not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

You are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony [11] accordingly.

You may consider proof of the defendant's or a witness' prior conviction of a felony or crime involving



moral turpitude as affecting his credibility, but it does not render him incompetent to testify, nor shall you consider it as evidence of the defendant's guilt of the offense for which he is on trial, nor shall you consider it in fixing punishment if you do find the defendant guilty.

The fact that the defendant has been indicted – I think we've already stated that in here, gentlemen, in the first instruction. Will you all look back at that? The first thing, "You should not assume the defendant is guilty because he has been indicted and is on trial." So I don't think we ought to –

MR. VON SCHUCH: Judge, it is the law, and to the extent that it's redundant, it's not necessary, if it's already in an instruction, so I don't have any objection if the Court removes that.

THE COURT: The defendant is charged with the crime of statutory burglary while armed. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant without permission in the nighttime entered without breaking a dwelling house; and

[12] (2) That he did so with the intent to commit robbery; and

(3) That at the time of the entry the defendant or Jeffrey Alan Cruse was armed with a deadly weapon.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offenses as charged, then you shall find the defendant guilty and fix his punishment at:

(1) A term of imprisonment for life or for any term not less than twenty (20) years; or

(2) A term of imprisonment for life or for any term not less than twenty (20) years and a fine of not more than $100,000.00.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above elements of the offense, then you shall find the defendant not guilty.

A deadly weapon is any object, not part of the human body, which can cause, or gives the appearance of being capable of causing, death or great bodily harm.

The defendant is charged with the crime of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant intended to steal; and

[13] (2) That money, guns, VCR, television, microwave, various jewelry, Cherokee Jeep and other tangible personal property was taken; and

(3) That the taking was from Morris C. Keller, Jr. or in his presence; and

(4) That the taking was against the will or the owner or possessor; and

(5) That the taking was accomplished by violence to the person or by the threat or presenting of firearms.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall



find the defendant guilty and fix his punishment at confinement in the penitentiary for life or for any term not less than five (5) years.

If you find that the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

The defendant is charged with the crime of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant intended to steal; and

(2) That money, guns, VCR, television, microwave, [14] various jewelry, Cherokee Jeep and other tangible personal property was taken; and

(3) That the taking was from Mary Elizabeth Keller or in her presence; and

(4) That the taking was against the will of the owner or possessor; and

(5) That the taking was accomplished by violence to the person or by the threat or presenting of firearms.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at confinement in the penitentiary for life or for any term not less than five (5) years.

If you find that the Commonwealth has failed to prove any one or more of the elements of the offense

beyond a reasonable doubt, then you shall find the defendant not guilty.

The defendant is charged with the crime of rape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant had sexual intercourse with Mary Elizabeth Keller or that the defendant was a principal in the second degree to the [15] rape of Mary Elizabeth Keller; and

(2) That it was against her will; and

(3) That it was by force, threat or intimidation.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at confinement in the penitentiary for life or for any term not less than five (5) years.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

A principal in the first degree is the person who actually commits the rape. A principal in the second degree is a person who is present, aiding and abbeting, by helping in some way in the commission of the rape. Presence or consent alone is not sufficient to constitution aiding and abbeting. It must be shown that the defendant intended his words, gestures, signals or actions to in



some way encourage, advise, or urge, or in some way help the person committing the rape to commit it.

A principal in the second degree is liable for the same punishment as the person who actually committed the rape. The Commonwealth must prove beyond a reasonable [16] doubt that the defendant is a principal in the second degree.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

The defendant is charged with the crime of abduction. Kidnapping and abduction are the same crime. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant by force or intimidation did seize and detain Mary Elizabeth Keller; and,

(2) That the defendant did so with the intent of depriving Mary Elizabeth Keller of her personal liberty; and

(3) That the defendant acted without legal justification or excuse.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at:

(1) A term of imprisonment of not less than one (1) nor more than ten (10) years; or

(2) Confinement in jail for not more than [17] twelve (12) months; or

(3) A fine of not more than $2,500.00; or

(4) Confinement in jail for not more than twelve (12) months and a fine of not more than $2,500.00.

If you find the Commonwealth has failed to prove any one or more of the elements beyond a reasonable doubt, then you shall find the defendant not guilty.

The defendant is charged with the crime of abduction. Kidnapping and abduction are the same crime. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant by force or intimidation did seize and detain Morris C. Keller, Jr.; and

(2) That the defendant did so with the intent of depriving Morris C. Keller, Jr. of his personal liberty; and

(3) That the defendant acted without legal justification or excuse.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at:

(1) A term of imprisonment of not less than [18] one (1) nor more than ten (10) years; or

(2) confinement in jail for not more than twelve (12) months; or

(3) A fine of not more than $2,500.00; or



(4) Confinement in jail for not more than twelve (12) months and a fine of not more than $2,500.00.

If you find the Commonwealth has failed to prove any one or more of the elements beyond a reasonable doubt, then you shall find the defendant not guilty.

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant burned a dwelling house; and

(2) The defendant acted maliciously; and

(3) That the defendant acted in the nighttime.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at:

(1) A term of imprisonment for life or for any term not less than twenty (20) years; or

(2) A term of imprisonment for life or for any term not less than twenty (20) years and a [19] fine of not more than $100,000.00.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above elements of the offense, then you shall find the defendant not guilty.

The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant and Jeffrey Alan Cruse killed Mary Elizabeth Keller; and

(2) That the killing was willful, deliberate and premeditated; and

(3) That the killing of Mary Elizabeth Keller occurred during the commission of robbery while the defendant was armed with a deadly weapon;

AND/OR

(4) That the killing of Mary Elizabeth Keller occurred during the commission of, or subsequent to, the rape of Mary Elizabeth Keller.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you [20] shall find the defendant guilty and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that Jeffrey Alan Cruse was the person who killed Mary Elizabeth Keller then you shall find the defendant guilty of first degree murder and fix his punishment at:

(1) Imprisonment for life; or

(2) A term of imprisonment of not less than twenty (20) years.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.



The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant killed Morris C. Keller, Jr.; and

(2) That the killing was willful, deliberate and premeditated; and

(3) That the killing of Morris C. Keller, Jr. occurred during the commission of robbery while the defendant was armed with a deadly [21] weapon:

AND/OR

(4) That the killing of Morris C. Keller, Jr. occurred during the commission of, or subsequent to, the rape of Mary Elizabeth Keller;

AND/OR

(5) That the killing of Morris C. Keller, Jr. occurred as part of the same act or transaction in which the defendant also killed Mary Elizabeth Keller.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that Jeffrey Alan Cruse alone killed Morris C. Keller, Jr. then you shall find the

defendant guilty of first degree murder and fix his punishment at:

(1) Imprisonment for life; or

(2) A term of imprisonment of not less than twenty (20) years.

If you find the Commonwealth has failed to prove [22] any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

Willful, deliberate, and premeditated means the adoption of a specific intent to kill. The intent to kill must come into existence at some time before the killing, but need not exist for any particular length of time.

You have been instructed on more than one grade of homicide and if you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant, and find him guilty of the lesser offense.

You may find the defendant guilty of capital murder if the evidence establishes that the defendant jointly participated in the fatal shooting, if it is established beyond a reasonable doubt that the defendant was an active and immediate participant in the act or acts that caused the victim's death.

All right, those are the instructions that you all will apply to the evidence that you have heard. Now these ladies and gentlemen will have an opportunity to argue their case before you.

MR. WOODSON: May it please the Court, Your Honor. Ladies and gentlemen of the Jury, I want to again



[23] thank you for serving as jurors in this case, taking your time off from your jobs and other things to come and serve. As I spoke to you in the beginning, we would be presenting evidence to you and would ask you to listen to the evidence and strictly make your decision from the evidence that you heard from the witness stand, that what the Commonwealth said to you was not evidence and what the defense said to you was not evidence.

At this point, the evidence is in; you've heard from all of the witnesses, and now it's your decision to determine the facts and make a decision based on the instructions that the Court has given to you.

The things about this case that are uncontradicted, I'll go through with you. There's no question about Morris Keller and Mary Elizabeth Keller being home on a Saturday night in Cumberland County; had not been out, were there at home, over in the Trent's Mill area. There's no question that Mr. Williams and Mr. Cruse went to the Lozano house, next to the Cumberland County Public Library. There's no question about that.

There's no question about Mr. Williams offering Albert Lozano one thousand dollars to take he and Mr. Cruse to a place to rob it. There's no question about that. But Mr. Lozano wouldn't do it; he knew something was not right about it and had been drinking too much. There's [24] no question about Verena James taking Mr. Williams and Mr. Cruse to Mr. Williams' house down 45. There's no question about that.

There's no question about Mr. Cruse then having a .357 pistol, which he showed to Ms. James and said that it belonged to Mr. Williams. There's no question about that.

There's no question about Ms. James then driving them to Bear Creek Market. Mr. Williams and Mr. Cruse, letting them out just below Bear Creek Market and Mr. Williams and Mr. Cruse then going to Bear Creek Market to rob it, but it being closed or ready to close and it just wasn't suitable to rob it. There's no question about that.

There's no question then Mr. Williams telling Mr. Cruse – and you've got to remember, Mr. Williams is from this area, he's told you that. He lived in that area, not far from where Mr. and Mrs. Keller lived at. He picked the house. He knew where there was an easy place to rob, back off the road. They walked to it, a mile and a half, and went to that house.

Mr. Cruse didn't know where Mr. and Mrs. Keller lived at. Who would Mr. and Mrs. Keller know? He picked some people to rob that he knew. Did he disguise himself? He went to that house; at the point when got to the house, he told you Mr. Cruse gave him the .357. They [25] knocked on the door. The plan was to ask Mr. Keller could they use the telephone. They asked Mr. Keller could they use the telephone, but he said, "Give me the number." At that point, Mr. Cruse opened the door, they walked into the house. There's no question of what happened in that house.

Mr. and Mrs. Keller were robbed. Mrs. Keller was raped – There's some question about if it was Mr. Williams who raped her and we'll talk about that. There's some question about that, but Mr. Cruse has told you what happened. You know about the abduction; you know about what happened when they left the house.



You know that Mrs. Keller asked for her marriage certificate; you know that they were both led down a road; you know that they were both found in the woods shot. You've seen pictures of that. You know Mrs. Keller was laying there with her marriage certificate clutched in her arms and you know that they then went back to the house and then burned the house.

They then took the Jeep. You've got witnesses from Fredericksburg that told you they bought property from Mr. Williams and Mr. Cruse and they identified both of them. They bought property the next day from them. You've got the evidence coming in, being given to you by members of the family, that it was Mrs. Keller's and Mr. Keller's items that were sold in Fredericksburg. No question about any of that. Now let's go back and look [26] at Mr. Cruse.

The Commonwealth put him on as a witness and let's look at what the evidence showed about Mr. Cruse, what situation he's in today. When he was first confronted about this case in the investigation, he told you, he did not tell the truth about it, he denied it. There was no evidence to charge Mr. Cruse. We could not charge Mr. Cruse with anything that happened at the Keller house, nothing that happened to the Keller family, nothing that happened in Fredericksburg. We didn't have any evidence. He denied it.

But we did have some evidence on him that he had a concealed weapon, the one he had shown to Ms. James. He was arrested on that, on a misdemeanor charge, and put in jail. We still had no evidence. We had no evidence of what he had done at the Keller house or what Mr.

Williams had done at the Keller house. But he had an attorney appointed to represent him on the misdemeanor charge and he talked, he told, he came forward. We couldn't charge him, but he told. He said what he did; he said he shot Mrs. Keller.

At that point, from what we were told by Mr. Cruse, we made an agreement with him, and we agreed that if he would tell us everything, give us the whole story that we want to know, we will not seek the death [27] penalty, "But you've got to tell us everything." He said he did, but evidence came up that Mrs. Keller had been raped. He didn't tell us that. Evidence also came up that some property had been sold in Fredericksburg and he had told us it was sold in Richmond. He didn't tell us that.

All right, at that point in time, Mr. Cruse's first attorney was out of the case and he had two new attorneys, two brand new attorneys that were suitable to him, and we met with them and we met with Mr. Cruse. And again, we didn't have evidence, other than Mr. Cruse; we had no evidence to charge him with, other than what he was telling us. We had no evidence; we told him that. "You didn't tell us the truth. You didn't tell us about the rape. You didn't tell us about selling the property up in Fredericksburg. The agreement is gone; it's torn up; there is no more agreement."

He said he understood that. Then we told him, "If you want to talk, that's up to you. If you talk, you face capital murder. It's up to you." He told us; he told the whole story. At that point he told everything that happened, he told about the rape, and then, ladies and gentlemen, he is faced with two counts of capital murder. He



faces the death penalty. There is no agreement with Mr. Cruse. What he is doing is on his own. When this is over he goes to trial and he faces the death penalty on two [28] charges of capital murder.

Now let me tell you what we have tried to do with you to corroborate him, to try to show you how you can believe him, why he's telling the truth. You have heard from Albert Lozano; you have heard from Verena James; you have heard from Lisa Schiermeier, the witness who came and told you about the rape; you've heard from George Li who came and told you about the rape; you've heard from Mr. Hallett who told you about the boot prints up in Fredericksburg; you've heard from Mr. and Mrs. Sine who identified Mr. Williams and Mr. Cruse in Fredericksburg; of Ms. Tolley and Mr. Ramey.

You've heard about all of that. You've heard from the officers in Fredericksburg as to them being up there and all of that being corroborated and trying to show you that what Mr. Cruse is telling is correct. If I can compare the two people, Mr. Williams and Mr. Cruse, and try to go through a little bit of their testimony with you to show you some differences.

Look at Mr. Williams' record. He told you on the stand that he had two felony convictions and one conviction of a misdemeanor or crime of moral turpitude. You can consider that in how believable he is. Let's look at Mr. Cruse. He has no felony convictions; not the first one. He's got one misdemeanor conviction of a crime of [29] moral turpitude; lying, cheating or stealing. Mr. Williams has got two felony convictions.

Let's look again. Who owned the .357? Who did that .357 belong to? Mr. Williams told you; it's his .357. But yet he lied about it. Albert Lozano testified to you that Mr. Williams told him he bought the gun. Well, what did he tell you? He found it. And then on cross examination he was asked, "Where did you find it?" You normally think you'd find something lost somewhere. He found it in somebody's house. "Well, did they want you to take it?" "No." Is that what you call finding?

Okay, it's his gun, it's his .357. Let's go further. Who suggested robbing the Bear Creek Market? Who knew about the Bear Creek Market? Mr. Cruse didn't know about Bear Creek Market; Mr. Williams did. When they couldn't rob Bear Creek Market, who knew about Mr. And Mrs. Keller? Mr. Cruse didn't. He didn't even know Mr. And Mrs. Keller, he'd never seen them before, he didn't know where they lived at. And who knew somebody that lived back off the road, that you might rob, and you're going to leave them as witnesses, you don't disguise yourself? You're going to go rob them and you're just going to walk away? What's going to happen to you? Do you think he did that?

Let's go into the hours. Again, Mr. Williams has told you at the time that they entered the [30] house, he had the .357. He has told you inside the house as to what happened and he's admitted to the robbery. Mr. Williams has done that and Mr. Cruise has done that. All that's been told you, how they looked through the house, how he kept the gun on Mr. And Mrs. Keller. But he denies the rape.



And let's remember now, he lied to his brother. He told his brother that he didn't shoot anybody. He never did anything, it was all Williams [sic], Williams did everything. Then he told you he finally told his brother another story, he shot one time, but he didn't rape her. He still says he didn't rape. But let me tell you something that doesn't lie to you, is Lisa Schiermeier and George Li.

George Li came in and told you, based on DNA testing, that they both could've raped her. You remember the chart George Li laid up there, the dots that Mr. Cruse had and they matched Mr. Cruse. If he was the only rapist, it was Mr. Cruse. He was then saying, "Okay, under the theory that there were two rapists, let's look at Mr. Williams." And if you look at Mr. Williams' dots, his dots fell exactly under Mr. Cruse, except one place, so that meant Mr. Cruse's dots would cover up all of Mr. Williams', so in the DNA testing, it would show exactly what it did if both of them raped. And that's what [31] Mr. Li told you, based on the evidence from Mr. Cruse that both raped, that's what his test showed.

But, now, let's look over to Lisa Schiermeier. That's the real key. She is the one that showed you the test that whoever raped Mrs. Keller had a 2-. One of the factors was a 2-. And out of the three men – Mr. Keller, Mr. Williams, and Mr. Cruse – who had a 2-? Mr. Williams. He's the only one that had a 2-. Yet he gets on that stand and tells you he didn't rape? Is that believable? That test does not lie, but he wants to tell you that. He wants you to believe that. Mr. Cruse has corroborated it, Lisa Schiermeier corroborated it, George Li corroborated it.

Now let's go further. Then Mr. Williams says that when he left the house, he told them he was going to take them down to the creek and hide them, because he hunted in that area. Then he told them he was going to burn the house. Do you go to a house and rob it, people that you know, you rob it and you're going to leave and they're going to be able to identify you? Remember, they didn't know Mr. Cruse. Do you go to the house and you rob them and you rape them and you're going to take them down to the creek and you're going to hide them and leave them there? They're going to come out of the woods and identify you. Do you leave them down there? Do you go to the [32] house, and you break and enter it, you rob them, you kidnap them, you rape them, you take them down to the creek and leave them there and come back and burn the house? They're coming back from the creek and they're going to identify Mr. Williams. Is it believable, when he left that house with them, that he was going to leave them alive in the woods? Is that believable?

Is it believable that she went to get her marriage certificate just because she thought it was going to be burned up in that house? I submit that Mrs. Williams knew what was going to happen when they went down that wood road that night.

And then he wants you to believe, he gets on that stand and asks you to believe that he went out in the woods – And let me go back again. Remember, he wanted the loaded .38 in the house. The question is, why did he get the .38 in the house? He was going to stand as lookout in the front and he wanted the loaded .38 because he would've had six shots rather than two shots. He told



you it was only two shots in that .357. He wanted the fully loaded .38. And when he went down that wood road that night, when he walked Mr. and Mrs. Keller and she was begging him not to hurt her in that house, and begged them not to hurt her husband, they walked them down that wood road that night, that winter night in the snow, two or three hundred yards, [33] over in the wooded are where Mr. Williams told you he hunted. He hunted in that area around the creek where he was going to carry them to. Did he carry them to a creek? Did he lose them at a creek? He walked them over there and he told you that he shot Mr. Keller first. Who shot first? He shot Mr. Keller first. That's what Cruse told you.

Who did not want to leave witnesses? Who, in your mind, would not want to leave witnesses? Cruse didn't even know Mr. and Mrs. Keller. They would not recognize Cruse. Who would they recognize? Mr. Williams. But he wants you to believe that he shot Mr. Keller, then all at once he turned and Mr. Cruse shot Mrs. Williams, and then Mr. Keller gets up and then he's telling you that Mr. Cruse comes and jerks the .38 out of his hand, pulls it out of his hand. Who would want to kill Mr. Keller at that time? Mr. Williams. He doesn't want any witnesses. Why would he want to leave Mr. Keller alive? Why would Cruse run over there and grab the .38? That just doesn't – It's unbelievable.

I submit to you that Ann Jones and Dr. Kay have corroborated everything that Mr. Cruse has testified to. They have told you that Mrs. Keller has shot with three different gunshot wounds to the head. Mr. Keller was shot with gunshots to the head and to the legs. The bullets they recovered -- They recovered a bullet at the

[34] scene; they recovered a bullet in the body bag of Mrs. Keller; they recovered a bullet in Mrs. Keller's head; they recovered a jacket off of a bullet in her back. They've testified to you that the bullet found at the scene was a .38; the bullet found in the body bag of Mrs. Keller was a .38; the bullet found in her head was what appeared to be a .38, that it had characteristics that it was all made by the same manufacturer. And she's told you that there was one .357; one, and that was it. And that's what Cruse told you. He told you there was one .357 fired. She's told you that; the other three bullets were different.

The ones found on the ground, she's told you could not have been fired by the .357. The one found in the body bag could not have been fired by the .357. And then what does Mr. Cruse tell you? He tells you he comes back out to the road, Mr. Williams hands him the .38 and tells him to reload it, because Mr. Williams doesn't have the .38 bullets. Mr. Cruse had stuck them in his pocket at the hours when he found the .38. That was before he gave the .38 to Mr. Williams because Mr. Williams wanted that fully loaded gun.

He told you he emptied the gun, took the cartridges and threw them over in the woods. The State Police went there. They found exactly what he told them. [35] He told them where they were at. They found those and you heard Ann Jones tell you, those four spent cartridges could not have been fired by the .357, could not have been, they had to be fired by a different gun.

Then what happened? They came back. And again, Mr. Williams does not want to leave any evidence. He's the man that's known to Mr. and Mrs. Keller. What does



he do? He loads stuff out of the house into the Jeep and burns the house down. Mr. Cruse is in it, they're both in it, but Mr. Williams is the one that knows Mr. Keller; he's the one that cannot leave witnesses and leave evidence. Then they drive the Jeep up to Fredericksburg and sell the property in Fredericksburg.

And you've heard witnesses say who was driving the Jeep. Mr. Williams is driving the Jeep. Then you've heard testimony as to where Mr. Williams was arrested. He was arrested in Georgia; he was picked up in Georgia. Officer Holt got on the stand and told you, when he picked Mr. Williams up in Georgia, what kind of jacket was he wearing? He was wearing a leather jacket. What did Mr. Cruse tell you? Mr. Cruse told you that Mr. Williams took a leather jacket from Mr. Keller's house; took his jacket off and put a leather jacket on.

And what did Jimmy Keller tell you? He told you that was his brother's jacket. And what did [36] Mr. Williams tell you? He told you that's right; he is wearing Mr. Keller's jacket. In Georgia, after murdering Mr. and Mrs. Keller, he's wearing the mans' jacket around.

Did he show you any emotion? Did you see emotion from him? What did you see from Mr. Cruse? Did you see some emotion from him? Didn't you see him cry some? But what emotion did Mr. Williams show you from that stand?

And then coming back with Mr. Holt, Mr. Holt told you – and these are believable people – he says, "What did Jeff Cruse tell you?" Mr. Williams said, "What did Jeffrey Cruse tell you about this?" Mr. Holt says, "He told us what happened. He told us the whole story."

There's one more little thing that comes up. Mr. Holt said, "We also found the .357. We've got the .357 out of the river." And you know who told him where to find the .357. Who helped do that? Mr. Cruse. Mr. Cruse, he told them the .357 was in the river in Fredericksburg. Where did they find it? Right where he said. He took them over there and showed it to them. It's corroborated, he's believable.

But what does Mr. Williams say when Officer Holt tells him that Mr. Cruse has told the whole story and they've got the .357? What does he say? And excuse my language, but Mr. Williams says, "I can prove that [37] Mr. Cruse had that goddamn .357." Now why does he do that? Because he knows that that .357 can be matched up with a bullet from Mrs. Keller. He knows that and he's going to put that .357 – And that's the only time he's told you the truth. He's going to put it in Mr. Cruse's hand because he knows where the .38 is. We don't have the .38 today. That .38 is not here. He knows it, he knows the .38 is not here and that we have no way of getting ballistics on it.

But let me tell you something. He sat right here – and he's got a right to do it – and he listened to everybody. Mr. Cruse didn't have that right to sit here and listen to everybody. He came in and told you as it was and it was corroborated right down the line on everything he said. You heard the witnesses, honest witnesses, believable witnesses, that showed you that Mr. Cruse is believable. He's telling it like it is. And Mr. Williams had his right to sit in here and listen to everything that happened.



And guess what? After he listens to everything, after he's told Mr. Holt that, "I can put that goddamn .357 in Mr. Cruse's hand," what does he do? He gets on there and tells you, "Huh-uh, wait a minute. I'm going to change my story some now. He grabbed the .38 from me." He knows he's got to get that .38 out of his hand. He can't say he had that .38. Now he's telling you that [38] somebody ran up and grabbed it out of his hand. But remember who can't have the witnesses; remember who picked the house to rob, that knew the people and didn't disguise themselves; remember the man who said he didn't rape and Lisa Schiermeier told you there's no question that he raped. He's the only one in there with a 2-. There's no question about that; that test doesn't lie.

Remember the man who told Mr. and Mrs. Keller he was going to walk them to the creek, because he knew the area where they hunted, and he was going to lose them at the creek and then burn the house up. You're going to rob from them, you're going to rape them, you're going to kidnap them, you're going to burn their house up, and you're going to leave them at the creek? Do you really think they believed that? Why did Mrs. Keller ask for her marriage certificate and where did they find it? Clutched in her arms, that marriage certificate.

Ladies and gentlemen, these are serious crimes. You've heard the Judge's instruction on what the punishment is. I would ask you to return a verdict of guilty on every charge in this case. And if you scale this case on one to ten, I will tell you this is a maximum case, it's a serious case. It's capital murder. There's no question. Mr. Williams is charged with five counts of capital murder

and I submit to you the evidence is beyond a [39] reasonable doubt that he's guilty of every one of them. I would ask you to return verdicts of guilty in each one of them. And again, I do appreciate the attention that you've given, I appreciate the duty you've done in serving. You've been a most attentive jury, you've listened to every bit of evidence, and I ask you to remember the evidence from the witness stand, remember who is believable, listen to the stories, use your common sense, and then deliberate. Thank you.

MR. FORD: If it please the Court, and ladies and gentlemen of the Jury, I, too, want to thank you for your attentiveness. I know it's been a long time and we're almost where were going to hand it over to you and let you make a decision in these cases, and there are a lot of cases that we are dealing with today and I think that's one of the important things.

When we talked before, when we were talking in voir dire and in the opening statement, I said it was going to be graphic. Capital murder is not a pretty murder, or any kind is not pretty. Rape, robbery, any of those types of crimes, there's going to be graphic evidence, but I think that you need to – and I think you will do this – I think you need to confine yourself. It tends to become emotional and I don't want you to view this as an emotional situation. You are the Jury and you are [40] charged with following the instructions the Judge has given you and apply that to the evidence that you hear in an unemotional, as best you can, I guess, an unemotional setting and an impartial way. And that's what we have charged you with and you indicated on voir dire that you would



do so and we have taken you at your word and that's why we have you on the Jury at this point.

The first thing I want to touch on, in any kind of a criminal case, is the burdens. And I think that's important. Everybody knows that in the United States if you are charged with a crime, you are presumed to be innocent, and that's a very important part. That distinguishes us from almost any other country in the world.

Michael Williams stands before you right now presumed to be innocent and it's up to the Commonwealth to prove beyond a reasonable doubt each and every element of each and every crime; and we've got a lot of crimes and a lot of elements. And it's going to take you a while to look over each one of them, compare it with what the Commonwealth has shown you, and make sure that you apply this standard that we use in each and every criminal case; beyond a reasonable doubt.

Suspicion is not enough – and the Judge has instructed you on that. You can suspect that he might be [41] guilty, but if you have a reasonable doubt on any element of any particular crime, then you have to find him not guilty of that particular crime.

Now as the Commonwealth has said, and it's pretty obvious from the evidence that you've heard, that we aren't disputing a lot of things that happened. There are a lot of things that Mr. Williams did on this particular evening that we can't condone and we don't intend to tell you to condone, but there are certain factors that we have to look at where there is a dispute.

Mr. Woodson has said that there was a lot of corroborating evidence. Well, it corroborates Mr. Cruse as well as Mr. Williams, because the stories are basically identical, with the exception of two points. And those two points are on the rape and on the actual shooting in the thicket.

Now let's talk about the rape first. The only person that actually puts Mr. Williams as the rapist is Mr. Cruse. He is the one that says that he was in the room, he saw the penetration, and all of that. What you have from the Commonwealth are two other scientists; one, Lisa Schiermeier, who came and tested the fluid that she had. And she said that he was a possible donor, could not be eliminated as a possible donor. So she didn't say he did it, she said he's a possible donor. Then you go to [42] George Li, who's the DNA expert. And everybody's heard about DNA and how important that is and how graphic that is and how well you can hone in on the defendant with that. But if you recall George Li, his slide showed that his test matched up Mr. Cruse perfect, absolutely to a tee. And the only reason he included Mr. Williams is because of one extra dot in there that he happened to share with Mr. Cruse, and so he said, "Well, we can't exclude Mr. Williams because of that."

Mr. Cruse's aligned up perfectly with that. And what Mr. Williams told you from the stand is that he didn't want to rape Mrs. Keller, that Mr. Cruse did, and we think that that's consistent with what Mr. Li has told you from the stand.

Now the biggest part of this case is the murders; what happened in the thicket. We can't dispute that Mr. Williams lived in Cumberland and that Mr. Cruse was not



from Cumberland, not from around here, had just gotten here a week or a month beforehand. And we can't dispute that Mr. Williams didn't live but a mile or two away from the Kellers. So, yes, he probably knew of them; not necessarily that he knew them exactly or they knew him exactly, but the families apparently had seen each other on the road possibly.

But that doesn't necessarily mean that he [43] has this great motive to kill. Mr. Cruse said that he had his hood over his face for a while and then he ended up uncovering it, so Mr. Cruse is just as open as Mr. Williams is. So when they go into the house, who's the first one in? Who barges into the door? Mr. Cruse.

While Mr. Williams was holding the Kellers at bay with a weapon, who's running around the house looking for stuff? Mr. Cruse. I mean, Mr. Cruse is here trying to portray himself as far removed from this. He's always saying, "Mr. Williams made me do this. Mr. Williams made me do that," but yet he's running around the house, he has several instances, once he gets the .38, where he could take control of the situation. He can leave. You heard Mr. Williams say he actually got the keys, went outside, started up the Jeep and backed it up. He could have left at that point in time, but he didn't. He stayed right in there with him.

And we also have to look at Mr. Cruse, because basically he's the crux. And we're talking about Mr. Cruse from the witness stand and Mr. Williams from the witness stand. Let's look at Mr. Cruse. He's lied on various different occasions to the police. He starts off with a statement that says, "I was at Bear Creek Market and then

we hopped a ride with somebody and went to Richmond and went barhopping." That's his first statement to the [44] police. Well, that may or may not be a normal situation. I mean, obviously he's worried and he doesn't want to implicate himself.

Then we get to the second statement. There's the offer; "We've going to give you first degree murder. Just tell us the truth. Here's your opportunity, your golden opportunity, to tell us the truth." And what does he say? He talks about the murder, he lays it all on Mr. Williams, and then he says nothing about the rape and nothing about selling the property in Fredericksburg. And what he says about not mentioning the rape, "Well, they didn't ask me about it."

I guess this is a situational kind of storyteller. As the situation progresses, he opens his story up a little bit more. He also lied to his friends in Fredericksburg. He told them that it was his property that they were selling. And he also lied in a preliminary hearing, under oath. He's under oath here to tell the truth, so you would hope that he would be telling you the truth, but he's got a track record.

In the preliminary hearing, he lied under oath about whether he had been convicted of a misdemeanor involving lying, cheating or stealing. He said no, he hadn't. And his excuse for that was he didn't quite understand the question; I guess that's what it was. And [45] he is also under a capital murder charge at this point in time because he blew it in his second statement, he didn't mention the rape, so he's sitting here with two capital murder counts on him and he wants you to believe him.



It's important, because if he can't convince you at this point in time, then he stands to go to death, he stands to take the death penalty. And if that doesn't influence anybody's testimony, I don't know what does.

So what we have now is approaching the thicket. Mr. Cruse and Mr. Williams both say that Mr. Cruse has the .357 and Mr. Williams has the .38. They both say that they approach the victims and they line up. That's consistent with both statements. Mr. Williams tells you that he pulls the trigger on the .38, on Mr. Keller. He tells you that Mr. Cruse then pulls the .357 trigger on Mrs. Keller. All of that is consistent. They are both tracking the same.

What difference then is what happens next. Mr. Williams says he steps back, he says he leans over to get the gun from Mr. Cruse, he says he hears a rustle and he turns and see Mr. Keller has stood up, at that point in time that Mr. Cruse grabs the weapon and starts to fire. Again, all of that is consistent with the evidence. And what you have is just a contest from here as to who is telling the truth. In this situation we talk about who [46] knew, who was going to have to leave witnesses or not leave witnesses. You've got both of them, both of them have had their faces shown, and it's an instant reaction. And I submit to you that it's certainly possible for Mr. Cruse to have gotten that weapon, fired the weapon at Mr. Keller again, fired the weapon at Mrs. Keller again, completely.

Now, we submit, and our theory is, obviously, that Mr. Cruse fired all three shots that killed Mrs. Keller. Certainly the .357; he admits that. That was a lethal bullet, Dr. Kay said. We also say that because he grabbed

the .38, he fired the other two shots into Mrs. Keller. We also have Mr. Williams testifying that he fired a .38 shot at Mr. Keller, but Mr. Keller stood back up. Dr. Kay testified that one of those wounds might not have been lethal. And we would submit that based upon the evidence that you see, when Mr. Keller stood up, that the wound that she said was possibly non-lethal, the one that came right to left, from here to here (indicating), was the one that he fired, Mr. Williams fired from the .38, and that once Mr. Cruse got the .38, that the other two wounds that he received, the head wounds which were lethal in and of themselves, were fired by Mr. Cruse.

And I would submit to you that Mr. Cruse is lying, that he certainly has a motive to lie, just as much as Mr. Williams. And I think upon those facts, with both [47] parties having the motivation to lie, that that leaves a reasonable doubt in your minds as to the capital murder charge.

Now I'm not suggesting that Mr. Williams is not guilty, that because of my scenario he walks, he gets off of murder. He's guilty of first degree murder on both counts.

Now this is the last opportunity that I'm going to have to speak to you. The Commonwealth has a chance to come up here and offer rebuttal testimony – or a rebuttal argument, excuse me. Not testimony, because nothing we say is evidence, is it? But one thing I want to keep in your minds, because this is it for me, if you will recall from Mr. Cruse's testimony, the Commonwealth asked him on redirect, "Is there any difference between what you're telling the Jury now and what you told the police," and he said



no. And I submit to you the question that you need to ask is, and the appropriate question was, "Was that the truth," what he told you and what he told the police, because he's told them so many times, you cannot possibly tell. And again, I thank you for your attention.

MR. VON SCHUCH: May it please the court. Good morning, ladies and gentlemen. You've seen me during the course of the trial. I'm the Deputy Commonwealth's Attorney for Chesterfield County. When this thing [48] occurred. Mr. Woodson had asked me if I would help him put this together and I agreed to do that, and come out and do that, and as you can see, it does take two attorneys to work on this thing.

I thought about this evidence and I had occasion to watch yesterday as the family of the Kellers came up and the family of Mrs. Williams came up to identify the property and I asked him if I might have an opportunity to talk to you as well at this time, and he graciously agreed to let me do that.

The purpose of my coming here is to rebut what Mr. Ford has told you. Now we have the right to do this because the Commonwealth has the burden of proof, so we get to have the last say. What I wanted to do, first of all, was talk to you about what Mr. Ford had told you the burden of proof in this case was, and you've heard about it from the first day; that the Commonwealth has the burden of proving to you that the defendant is guilty beyond a reasonable doubt. And those are the keys words, and that is the standard by which you measure every element that is listed for the offenses in the instructions.

And I know the first question that you ask is, "What does that mean?" It is a full page instruction and it could probably go on for two pages to explain it, [49] but if I can cut through it and I can make it easier for you, I can help you by saying it this way. If applying your common sense to what you heard from the evidence, you believe the defendant is guilty, then the Commonwealth has proven it's case beyond a reasonable doubt. If applying your common sense to what you heard from the evidence, you believe that the defendant is not guilty or guilty of a lesser offense, then the Commonwealth has not met its burden.

Now, the important thing about that is that it is included in the same instruction as the defendant's presumption of innocence and it's important that they are taken together. Now, presumption of innocence I know is something this Jury has heard of before it walked in this Courtroom today. Every defendant who has ever been tried in a criminal case in this country has been presumed to be innocent. But I will tell you, as soon as you apply your common sense to this evidence and you believe the defendant has committed these crimes, he has no more presumption of innocence and that's why they are included together in that same instruction.

Now what Mr. Ford and Mr. Woodson have told you essentially is this; the defendant is guilty of arson, the defendant is guilty of two counts of robbery, the defendant is guilty of two counts of abduction, the [50] defendant is guilty of burglary. By his own testimony. There's no dispute about that. The only dispute is about the rape and whether he is guilty of first degree murder or capital murder. And I would tell you this, that from the thirty-



some odd witnesses of the Commonwealth, from the forty-some odd exhibits of the Commonwealth, there is no dispute in this evidence over the defendant's guilt of rape or capital murder.

The only dispute in this evidence comes from the testimony of the defendant himself, and that's what I want to talk about. Well, I noticed when Mr. Ford stood up and talked to you, he indicated to you that it was a privilege to represent Michael Williams. Well, let me tell you, neither Mr. Woodson nor I will ever say that it is a privilege to have a relationship with Jeffrey Cruse or Mr. Williams.

But there is a difference between the two of them. Michael Williams went into the house and did all those horrible, disgusting things you heard about and wore Mr. Keller's jacket to Florida, and wore it all the way back in the police car. And when I asked him why, he just didn't get it. He said, "Well, he was already dead." That's what it meant to him. It's like stepping on bugs. Not one bit of remorse during his testimony. And now we have a new language. When you break into people's houses [51] and you steal things, when you break into their cars and steal things, it's finding. That's what Michael Williams is like. Jeffrey Cruse is different. Not different enough that he wouldn't do the same things Michael Williams did, but different enough to feel bad about it, different enough to talk to the police about it.

He told you about an incident that occurred several weeks ago when I had laid out one of those pictures which you had seen of the Kellers in the woods. I asked him what happened and he said he lost it, and, boy, did

he ever. And when he got on the witness stand here, he broke down again, when Mr. Ford pushed him and then when he was asked questions by me.

When he was arrested on that concealed weapon charge, and you heard the officers testify, there wasn't a single thing that they could have charged him with about these offenses, not a single thing, but he went ahead anyhow and told the police and got himself charged with it. Apparently Mr. Cruse feels bad. He at least has that much conscience. And that is a big difference between this (indicating defendant) and Mr. Cruse.

Mr. Ford is absolutely correct. When Mr. Cruse came down the first time, when he wanted to talk, when he told us, when we had no choice but to enter into that agreement, because anything he said we were going to [52] charge him with, because we didn't have any other way of charging him, and he did not tell about the rape and Mr. Woodson went back and tore up the agreement. And he sits here today facing the death penalty; he sits here facing capital murder, two counts of capital murder. And like he told you right now, his back is against the wall; if he lies, he dies, and that is his situation.

And that's where he's coming from when he comes into this courtroom. Now he's different, you see, from Mr. Williams, because Mr. Cruse's testimony makes Mr. Williams guilty of capital murder, makes him guilty of rape. If Mr. Williams does not lie, he is guilty of these offenses. There is a difference between the two of them. The last question I asked Mr. Williams on cross examination was, "The truth of it is, Mr. Williams, the truth of it is that if



Jeff Cruse hadn't told on you, you wouldn't be here on trial today, would you?" And he said that's the truth.

Now where is Mr. Williams coming from? You don't think he doesn't have a motive to get back at Jeff Cruse? You don't think he doesn't sit there with that on his mind? If Jeff Cruse hadn't told the police what happened and hadn't taken them to the river, this man is walking around out there and he's still got his .38. Think about what's in Mr. Williams' mind when he's up here telling you this story.

[53] Actually, between Mr. Williams and Mr. Cruse, you can see who's telling the truth by looking at the other evidence, as Mr. Woodson pointed out. Mr. Williams got on that witness stand – First, he walked over there and placed his hand on a Bible, then he came over here and sat on that witness stand and looked at you and told you that he did not rape that woman. And I asked his specifically, "I want to be sure, I want to be clear, I don't want any question about it. You're sitting there and you're telling this Jury right now that you did not rape that woman?" And he said yes.

George Li found that if Michael Williams and Jeff Cruse raped Mrs. Keller, that they would both be in there, that Mr. Cruse's pattern would cover up Mr. Williams', but they could both be in there if they raped. "Well, gosh, Mr. George Li, how do we know for sure then that he really is in there?" Well, you see, then we go back to Lisa Schiermeier, because she wasn't measuring DNA, remember, she was typing the seminal fluids and she found a mixture.

Now, Mr. Ford has told you – and she showed you the chart – Mr. Ford has told you, "Well, there was a 2- in there, but as Ms. Schiermeier told you, that's a large percent of the population." Well, I don't care about the population, I care about the three possible people, the [54] only possible people, the only people who were in that house that night. That's what I care about. Which one of those three was a -2? I don't care about the rest of the world, because they didn't rape, they didn't have sex with Mrs. Keller. I care about the ones that were there that night. And is Jeffrey Cruse a -2? No. Is Mr. Keller a -2? No. The only one of those four people that was detected as a 2- in that mixture was this man over here, and that's how we know George Li found him in the DNA and that's how we know he is lying.

So now what do you believe about Mr. Williams? Well, then I asked him on cross examination. "You sit there and you tell me that you fired only one shot, is that right?" And I said, "Is that the same kind of truth as the truth you're telling us about raping Mrs. Keller?" And he looks me right in the eye and he says, "Yes." And he's right, it is about the same kind of truth. It's kind of like "finding."

It's funny though that when he stands up there, when he has every motive to lie, he tells you that he only fired one shot. But on the way back from Georgia with Officer Holt, when for the first time he finds out Jeff Cruse has told them the whole story, what does he say? "Oh, geez, Officer Holt, you know, I only fired that one shot," or how about, "Well, geez, Officer Holt, you know, [55] he had the .38 and shot everybody." Does he say that? No. The first words out of his mouth are, "Jeff Cruse



had the goddamn Black Hawk." He said, "I can prove it," and in a way we could, because Jeff Cruse said that there were two bullets in there and he fired one of them and there still should be one in there. And when the gun was found, Ann Jones says there was one, just one, .357 Ruger bullet like the jacketed bullet that was found in Mrs. Keller.

You know, the reality for Jeff Cruse is that from the first day, when he told us that he fired that shot into Mrs. Keller, from that point on it didn't matter to him what else happened, because he was guilty of capital murder as a matter of law and as a matter of fact. So it doesn't matter to him whether he fired one shot, six shots, all the shots, or some of the shots. When he testified that he fired that first shot, he had already put himself in the pot, so he doesn't have any reason to lie. He doesn't have any motive to protect himself, he has already done it to himself when he says he killed Mary Elizabeth Keller and he fired that shot.

Looking at the evidence from the light most favorable to Mr. Williams – and let me say this to you. If you believe the Commonwealth's evidence in this case, you don't have any issues to decide. If you believe everything Mr. Williams told you – let's assume for a [56] minute that that happens. What about capital murder? Can he still be guilty of capital murder? Yes. Even under his own theory of facts. He admitted that he fired a shot into Morris Keller. Mr. Ford has told you he believes that to be the shot that did not enter his brain, that went through his cheeks behind his mouth. It's a shot that he was able to jump up from. Dr. Kay told you, and we had asked her a number of time – and I would ask you to recall her

testimony – about that being lethal or potentially lethal. And she had indicated that all of the gunshots contributed to his death.

"Well, what about that one? Could that one do it, just by itself?" She said, do you recall, "It could. I don't know. You'd have to wait and see what happened." And I showed her the autopsy report where she had listed, Cause of Death – Gunshot wounds, multiple gunshot wounds, and I said, "Did you include in the cause of death, when you say multiple gunshot wounds, this gunshot wound to the head from which he could have staggered to his feet from," and she said, "Yes." That's been the evidence.

And if you understand that, I would direct you to the jury instruction number 18. It says, "You may find the defendant guilty of capital murder if the evidence establishes that the defendant jointly participated in the [57] fatal shooting," and we're talking about Morris Keller, "if it is established beyond a reasonable doubt that the defendant was an active and immediate participant in the act or acts that caused the victim's death." And I would submit to you that inflicting a gunshot wound into Mr. Keller that contributed to his death, by the expert testimony of Dr. Kay, is sufficient for you to find him guilty of capital murder of Morris Keller, even if you believe everything he says.

I don't want to take a lot more of your time. Like Mr. Woodson, I thank you. I would like to say one thing; we have done a lot of talking here today about Mr. Williams and Mr. Cruse. There are other people involved in this case, and that's why I asked to come up here, because



insofar as Morris Keller was concerned, I had listened to the testimony of Ann Jones and I had noted the position of Morris Keller as he was found draped over his wife.

He had suffered one gunshot wound to the left side of his face and that was the side that was exposed. It was a close gunshot wound; someone put the gun right up almost in contact to the side of his face and shot him there. It was consistent with the residue pattern on the back of his shirt that he was shot in that position. To me, that means that he was in that position from those [58] wounds and that was the last shot that was put into his brain. There's nothing that Mr. Keller ever did in his life, that I know about, that justified that happening to him. Privilege? No, no, not Mr. Williams or Mr. Cruse, Mr. Ford. I'm sorry. Privilege maybe to know the Kellers, yeah. Maybe that's a privilege.

And then this case is also about Mary Elizabeth Keller. Now I don't know, and I can't tell you, I don't know whether she grabbed that marriage certificate after being raped twice at gunpoint in her own house, being led out in the woods, knowing that she was going to die, because she was trying to tell everybody that, "No matter what they do to me, I'm still Mrs. Keller," or whether she was really concerned about maybe, "I want them to know who we are when they find us." I don't know. But there is nothing that she ever did in this world that justified what happened to her.

Mr. Woodson has told you this is a maximum case. I hope I have emphasized that with these examples. I thank you very much.

* * *

VIRGINIA:
IN THE CIRCUIT COURT FOR
THE COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

INSTRUCTION NO. 14

The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant and Jeffery [sic] Alan Cruse killed Mary Elizabeth Keller; and

(2) That the killing was willful, deliberate and premeditated; and

(3) That the killing of Mary Elizabeth Keller occurred during the commission of robbery while the defendant was armed with a deadly weapon;

AND/OR

(4) that the killing of Mary Elizabeth Keller occurred during the commission of, or subsequent to, the rape of Mary Elizabeth Keller.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that Jeffrey Alan Cruse was the person who killed Mary Elizabeth Keller then



you shall find the defendant guilty of first degree murder and fix his punishment at:

(1) Imprisonment for life; or

(2) A term of imprisonment of not less than twenty (20) years.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

[Given /s/ J. Snoddy]

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INSTRUCTION NO. 15

The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) that the defendant killed Morris C. Keller, Jr.;

(2) That the killing was willful, deliberate and premeditated; and

(3) That the killing of Morris C. Keller, Jr. occurred during the commission of robbery while the defendant was armed with a deadly weapon;

AND/OR

(4) That the killing of Morris C. Keller, Jr. occurred during the commission of, or subsequent to, the rape of Mary Elizabeth Keller;

AND/OR

(5) That the killing of Morris C. Keller, Jr. occurred as part of the same act or transaction in which the defendant also killed Mary Elizabeth Keller.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that Jeffrey Alan Cruse alone killed Morris C. Keller, Jr. then you shall find the defendant guilty of first degree murder and fix his punishment at:

(1) Imprisonment for life; or

(2) A term of imprisonment of not less than twenty (20) years.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

[Given /s/ J. Snoddy]

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INSTRUCTION NO. 16

Willful, deliberate, and premeditated means the adoption of a specific intent to kill. The intent to kill must come into existence at some time before the killing, but need not exist for any particular length of time.

[Given /s/ J. Snoddy]

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INSTRUCTION NO. 17

You have been instructed on more than one grade of homicide and if you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant, and find him guilty of the lesser offense.

[Given /s/ J. Snoddy]

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INSTRUCTION NO. 18

You may find the defendant guilty of capital murder if the evidence establishes that the defendant jointly participated in the fatal shooting, if it is established beyond a reasonable doubt that the defendant was an active and immediate participant in the act or acts that caused the victim's death.

[Given /s/ J. Snoddy]

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INSTRUCTION NO. 19

You are instructed that the word "only" as it is used in Instruction No. ___ means that Jeffrey Alan Cruse was the immediate perpetrator, that is, the one who fired the fatal shot, in the killing of Morris C. Keller, Jr.

[Refused /s/ J. Snoddy]

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INSTRUCTION NO. 20

As part of the Commonwealth's burden of proving the offense of capital murder, you have been instructed that the Commonwealth must prove beyond a reasonable doubt that the defendant was the individual who killed the victim. Where evidence of more than one person's involvement in the crime is offered, only the person responsible for the actual infliction of mortal wounds may be convicted of capital murder. A suspicion of guilt, no matter how strong, is insufficient to convict the defendant of the offense of capital murder.

[Refused /s/ J. Snoddy]

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VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on/or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

> did, willfully, deliberately and with premeditation, feloniously, kill and murder Mary Elizabeth Keller in the commission of robbery of Mary Elizabeth Keller [and Morris C. Keller /s/ J.S.] while armed with a deadly weapon in violation of Section 18.2-31(4) of the Code of Virginia, 1950, as amended

We, the jury, find the defendant guilty of Capital Murder of Mary Elizabeth Keller as charged in this Indictment.

/s/ Bonnie B. Stinnett
FOREMAN

or

We, the jury, find the defendant Michael Wayne Williams guilty of first degree Murder of Mary Elizabeth Keller and fix his punishment at:

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FOREMAN

OR

We, the jury, find the defendant Michael Wayne Williams not guilty.

_____

FOREMAN

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VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on/or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Mary Elizabeth Keller subsequent to [the rape of /s/ J.S. Mary Elizabeth Keller in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended

We, the jury, find the defendant guilty of Capital Murder of Mary Elizabeth Keller as charged in this Indictment.

/s/ Bonnie B. Stinnett
FOREMAN



and/or

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on/or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. subsequent to [The rape of /s/ J.S] Mary Elizabeth Keller in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended

We, the jury, find the defendant guilty of Capital Murder of Morris C. Keller, Jr. as charged in this Indictment.

/s/ Bonnie B. Stinnett
FOREMAN

and/or

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths

present that MICHAEL WAYNE WILLIAMS on/or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. in the commission of robbery of Morris C. Keller, Jr. [and Mary Elizabeth Keller /s/ J.S.] while armed with a deadly weapon in violation of Section 18.2-31(4) of the Code of Virginia, 1950, as amended

We, the jury, find the defendant guilty of Capital Murder of Morris C. Keller, Jr. as charged in this Indictment.

/s/ Bonnie B. Stinnett
FOREMAN

and/or

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on/or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.



did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. and Mary Elizabeth Keller as a part of the same act or transaction in violation of section 18.2-31(7) of the Code of Virginia, 1950, as amended.

We, the jury, find the defendant guilty of Capital Murder of Morris C. Keller, Jr. as charged in this Indictment.

/s/ Bonnie B. Stinnett
FOREMAN

or

We, the jury, find the defendant Michael Wayne Williams guilty of First Degree Murder of Morris C. Keller, Jr. and fix his punishment at:

_____

_____
FOREMAN

OR

We, the jury, find the defendant Michael Wayne Williams not guilty.

_____
FOREMAN

_____

VIRGINIA:
IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

Trial – Day Four
January 6, 1994

* * *

[85] MR. WOODSON: Your Honor, the Commonwealth would like to submit for the record the prior conviction, criminal convictions of Michael Williams, and we have the Court Orders here, Your Honor, and I'd like to read them to the Jury, if I could, and then I'll submit them to the Court.

THE COURT: All right.

MR. WOODSON: Ladies and gentlemen, in the Circuit Court of Cumberland County on September 27, 1983 – this is a conviction order, Commonwealth of Virginia versus Michael Williams. I will just briefly tell you what the conviction is for, unless the defendant wants me to read the entire Court Order.

MS. CARRICO: No.

MR. WOODSON: This conviction is for the unauthorized use of a vehicle having a value of less than $200.00, and Mr. Williams was convicted in Cumberland on September 27, 1983 of that charge.

[86] Then on April 14, 1989, in the Circuit Court for the City of Richmond, Mr. Williams was convicted for the possession of methamphetamine, a Schedule II controlled substance. That's a felony conviction in the Circuit Court of the City of Richmond, April 14, 1989.



On that same date in the Circuit Court of the City of Richmond, on April 14, 1989, Mr. Williams was also convicted of grand larceny, which is another felony.

These are what the conviction orders would show and I'd like to submit these as the next Commonwealth's exhibit.

THE COURT: Gentlemen, is it all right to make these one exhibit?

MS. CARRICO: No objection.

THE COURT: Now, you all realize I don't want those in the same – I'll start these A, B, C, if that's all right. Commonwealth's Exhibit A, consisting of three convictions.

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VIRGINIA:
IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[87] The witness, JOHN HOWARD WILLIAMS, having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Good afternoon. I'm going to ask you, if you would, to speak up very load so this gentleman all the way back here can clearly hear you.

A Okay.

Q Would you give the ladies and gentlemen of the Jury your name, please?

A John Howard Williams.

Q And are you related to the defendant in this case, Michael Williams?

A Yes.

Q And what is the relationship between the two of you?

A I'm his brother.

Q Now, again, could you keep your voice up. How old are you, Mr. Williams?



A Twenty-three.

Q And how is your brother at this time?

A Twenty-six.

[88] Q He would be your older brother then?

A Yes.

Q Have you and your brother lived in Cumberland County?

A Excuse me?

Q Have you lived in Cumberland County for a number of years?

A Yes, we have.

Q All your life?

A Practically.

Q Were you raised in the same home that your brother, Michael Williams, was?

A Yes, I was.

Q Do you have any prior criminal record?

A No, I don't.

Q You've never been convicted of a felony or a misdemeanor involved lying, cheating or stealing?

A No, I have not.

Q Can you indicate to the ladies and gentlemen of the Jury the educational level that you've achieved?

A Excuse me?

Q Can you indicate how far you've gone in school?

A Two years of college.

Q What college was that, that you attended?

[89] A Valley Forge Christian College.

Q Did you have occasion to be home from college on Christmas of 1992?

A Yes, I did.

Q And did you have occasion to be with your brother that Christmas Eve afternoon, the 24th?

A Yes, I was.

Q And that would be Michael Williams?

A Yes.

Q Can you tell us where the two of you had gone that afternoon?

A We drove to Farmville.

Q Again, I'm going to have to ask you to speak up so all of these –

A We drove to Farmville.

Q And what did you do in Farmville?

A We rode around for a while and then we went back to a friend's house.

Q Who was the friend's house that you went back to?

A George Atkinson.



Q Had you met him while you were out or were you planning just to stop by and visit him?

A First we stopped by his mother's house to look for him and she told us that he wasn't living there no [90] more, so we gave him a phone call, but his dad said he wasn't in, so we decided not to go see him. We then went to the Wal-Mart store in Farmville and he happened to walk in while we were there and we started talking to him.

Q Was George Atkinson, Jr. a friend of yours?

A He was a friend of my brother's.

Q How long had he been your brother's friend?

A Several years.

Q What was your relationship with him? Was he just your brother's friend or did you like him, too?

A No, he was also a friend of mine.

Q When you ran into George Atkinson, Jr., where did you all decide to go?

A First we were going to go to some party or something, but we decided to go back to his house first so he could get cleaned up.

Q Now, you, I think, at this time – I'm just kind of guessing, from what you've said, that his mother and father lived in different places?

A That's what I gathered, because they had two different houses, right.

Q When you went back with George Atkinson, Jr., was that his mother's house or his father's house?

A His father's house.

Q Do you know where that's located?

[91] A In Rice.

Q And would that be in Prince Edward County?

A I guess so.

Q Do you know what time it was that you and your brother, Michael, and Mr. Atkinson, Jr. got back to the house?

A Somewhere around maybe 5:00 or 6:00.

Q Was there anybody else there when you all got there?

A His father.

Q What did you do when you got back there? What were the four of you doing?

A We were drinking.

Q Can you describe the layout of the house, in terms of is it a single story house?

A Single story.

Q And what room were the four of you in?

A The living room.

Q Is there a bedroom in that house?

A I'm sure there is.

Q Do you know where it is in relationship to the living room?



A It was down a hall.

Q Were you in that living room when Mr. Cutter and Mr. Villalobos came into that house?

[92] A Yes, I was.

Q And now there were six of you in the house, if my math is right?

A Yeah.

Q What were you all doing at that time?

A We were still drinking.

Q Do you know how long it was that you were sitting there drinking and talking before you, I guess, passed out?

A We had been drinking for a while before we got there, then when we got there we were drinking, also. I don't know, maybe an hour or two hours before I passed out. I don't know.

Q From the last thing that you remember, had there been any problems in the house between any of the parties in the house?

A Not that I know of.

Q Now tell us what happened; what's the next thing that you remember?

A Being in my car; riding in my car.

Q What was your condition at that time?

A I was going in and out, passing out, and I was very sick and I was very cold.

Q And you were in your car?

A Yes.

[93] Q Who else was in the car with you?

A My brother.

Q Michael Williams?

A Yes.

Q And what happened as you were driving alone?

A The car ran hot and so we stopped and made a fire.

Q What was your condition?

A I was still the same way.

Q What about the condition of your clothes?

A I was really wet.

Q Do you know how you got wet?

A At that point, no, I didn't.

Q Do you know whether or not that bedroom had a waterbed in it?

A I was told so.

Q You don't remember going back to that bedroom?

A No, I don't.

Q Now, as you stopped and made a fire, did Mr. Williams, your brother, start to tell you what had happened in the house?



A In between me passing out and waking up, yeah.

Q And what did he tell you happened in the [94] house after you had – Did you go back to the bedroom by yourself, do you recall?

A I guess I was carried back there.

Q Tell us what your brother told you happened in that house after you passed out and didn't remember.

A Well, I passed out right after the two other gentlemen came in and then, evidently, they had been doing several different things; you know, just talking and stuff, still. I believe my brother was still talking to Mr. Atkinson some. And then, evidently, a confrontation broke out between my brother and Villalobos, at which time Villalobos had a handgun and placed it –

Q Had a handgun?

A Yeah, and placed it towards my brother.

Q Did you see any handguns in that house when you went in there?

A I never saw a handgun, no.

Q Did you ever see a gun cabinet of any sort?

A Yes, I did.

Q Did you take a look at it and see what types of weapons might have been in that gun cabinet?

A I didn't look. It was across the room from me and I didn't get up and walk over to it.

Q Did your brother indicate to you whether or not he had ever met or known Villalobos before?

[95] A He never knew him.

Q And so he told you that Mr. Villalobos had this handgun. What was he doing with it?

A After they got into a confrontation, he put it in my brother's face and he made several threats.

Q Did your brother ever tell you what the confrontation was supposedly about?

A No.

Q What happened after Mr. Villalobos put the gun in your brother's face and was making threats?

A Somehow the gun got put down and then my brother was yelling for me to come out of the room so we could leave, but I never responded, because I was passed out. And then Villalobos and Cutter turned and started going down the hallway to where I was.

Q What did your brother do when they started moving towards the hallway which led to the bedroom, I guess?

A He picked up the gun and went back and shot Mr. Villalobos.

Q What did he indicate to you had happened to Mr. Cutter at that time?

A Mr. Cutter jumped at my brother, so my brother had turned and shot him.

Q Now, Mr. George Atkinson, Jr. was still in [96] the house and Mr. George Atkinson, Sr. was still in the house. What did he indicate happened next?



A Well, the Sr. also, I believe, came towards my brother and he also got shot.

Q Did your brother ever indicate to you anything about Mr. Atkinson, Sr. calling the police or doing something?

A All I know is when he started shooting, he started coming. I don't know exactly what happened.

Q And where did your brother go after that?

A To the room where I was.

Q And what happened when he got back to the room? What did he indicate to you? What did he tell you he did?

A He came into where I was, where I had passed out at. George Atkinson, Jr. was passed out next to me.

Q That's his friend?

A Yes.

Q And when he came in there, he then shot George Atkinson, Jr.

Q Did he tell you why he did that?

A Just that, you know, with everything going on so fast and everything, it was like, you know, that he was also there; he felt that we were threatened.

Q Well, is that what he told you?

[97] A He told me that he came in there and also he had known that his father – His father had been shot and that he had to shoot him, also.

Q Let me just ask you this. Do you remember testifying in Prince Edward County at the preliminary hearing?

A Yes.

Q And let me ask you; do you recall being asked by Mr. Ennis as to why your brother told you he shot George Atkinson, Jr.?

MS. CARRICO: Your Honor, I object. He's impeaching his own witness. He's called Mr. Williams as his own witness.

MR. VON SCHUCH: I'm just seeing if I can refresh his recollection, Your Honor.

MS. CARRICO: I believe he's trying to impeach him with a prior inconsistent statement.

MR. VON SCHUCH: He hasn't made an inconsistent statement at this point.

THE COURT: He hasn't said anything.

MS. CARRICO: Please note my objection.

MR. VON SCHUCH: I'm sorry; I know what I'm referring to. I'm sorry.

[98] BY MR. VON SCHUCH: (Continuing)

Q Now, what was the next thing that your brother told you happened?

A He then picked me up. Well, me and George, Jr. both sunk into the waterbed and he pulled me out and carried me out to my car.



Q And did he tell you why he burned the house down?

A Excuse me?

Q Did he tell you why he burned the house down?

A Yeah. They'd have his DNA and he burned the house down so there would be no record that we were there.

Q Do you remember what time it was you got home?

A Well, after we broke down, first off I was like freezing, so my brother called a police officer. He dialed 9-1-1 and –

Q After he had shot all these four people, he called a police officer?

A Yes, he did.

Q What did he tell the police officer?

A Well, I was freezing to death; I was wet and it was very cold, Christmas Eve, so he called the cops because he was scared I was going to freeze to death. So [99] the police officer came and put me in the car so I could warm up.

Q And did you manage to get home after that?

A Yes, I did. My father came and picked us up.

Q Now, Mr. Williams, did you have occasion to be home again from college on February 28th, that weekend that the Kellers were killed?

A Yes, I was.

Q And who was it that went to Richmond to pick up the defendant on that occasion?

A I did.

Q And did the defendant have any weapon with him at that time?

A At that time?

Q Yes.

A Yes.

Q And what was that?

A It was a handgun.

Q Do you know anything much about handguns?

A I know nothing about handguns.

Q You saw the handgun that he had?

A Yes, I did.

Q Was that the same handgun? Did you see a handgun – You didn't see a handgun in Prince Edward [100] County?

A I wouldn't remember.

Q That was the only handgun you've seen him with?

A I have no idea. It was a half a year between the two. I don't remember what gun looks like what.

Q When you returned to Cumberland County, where did your brother go?



A He came back to the house with me.

Q And how long did he stay in Cumberland after that?

A He spent the night.

Q Did he flee the jurisdiction?

A I'm sure he did; he got picked up in Georgia.

Q Were you at the house when there was some discussion about him leaving?

A No, I wasn't.

Q When did you go back to college?

A I never got back to college.

Q Did you stay at the house after that?

A I was arrested.

Q For your involvement or potential involvement in Prince Edward County?

[101] A For being at Prince Edward when the Prince Edward case happened.

Q Let me ask you this. Did there come a point in time when you came to the Cumberland County Police Department?

A Excuse me?

Q Did there come a time when your father brought you down here to the police department in Cumberland County?

A No.

Q Can you hear me?

A No, he never brought me to the Cumberland County Police Department.

Q How did you get in contact with Officer Tyree?

A After I was arrested, he met me at the Prince Edward Courthouse.

Q And did you come and make a statement to the police about what happened in Prince Edward County, as well as what happened in Cumberland County?

A After I was arrested, yes, I did.

Q And did you do that voluntarily, on your own?

A Yes, I did.

Q No one brought you down, no one dragged you [102] in; you came down on your own and told what you knew at that time about what Michael Williams had done, correct?

A Yes, I did.

MR. VON SCHUCH: That's all the questions I have, John. Would you please answer any questions that Ms. Carrico has?

MS. CARRICO: No questions, Your Honor.

THE COURT: You may step down.

* * *

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[108] The witness, WILLIAM MASSELLO, III, M.D., having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Good afternoon, Dr. Massello. Would you give the ladies and gentlemen of the Jury your name, please?

A William Massello, M-a-s-s-e-l-l-o.

Q Are you employed, Dr. Massello?

A Yes, I am.

[109] Q And where and in what capacity?

A I am a forensic pathologist. My job title is Assistant Chief Medical Examiner for Western Virginia, and I work in Roanoke.

Q And what do you do, essentially, in that capacity?

A As I mentioned, I'm a forensic pathologist, and this is a doctor who specializes in death investigation. And pursuant to the Code of Virginia, our office investigates all violent deaths or suspicious deaths which take place in the western part of the state. And we do this by examining dead human bodies, interpreting patterns of

wounding, performing autopsies or internal examinations of the body, and also doing some special things, such as looking at organs and tissue under the microscope and interpreting tests for poisons and drugs.

Q Dr. Massello, did you have occasion in that capacity to perform an autopsy on Mr. Villalobos?

A Yes, I did.

Q Can you tell the ladies and gentlemen of the Jury what the results of your examination were, please?

A Yes. Jeffrey Villalobos had a gunshot wound to the back of the right side of the head. I'm indicating the approximate location with my index finger. And this bullet went in a forward direction, going slightly right to [110] left, into the head and into the brain, and caused damage to the brain in its passage and, as such, resulted in the gentleman's death. In addition, of course, there were burns to the body, charring of the skin, and this involved approximately seventy to ninety percent of the body surface, or at least three-fourths of his body and nearly a hundred percent of his body.

Q Could you make any determination of whether the burning was pre- or postmortem?

A This was after death.

Q Did you have occasion to have pictures of Mr. Villalobos in the condition that he was as you received him in the morgue?

A Yes, I do.

Q And do they depict the gunshot wound that you have described?



A Yes, they do.

MR. VON SCHUCH: I would offer them at this time as a Commonwealth's Exhibit.

MS. CARRICO: Your Honor, I'm going to object to the introduction of the pictures at this time. I think they're inflammatory.

MR. VON SCHUCH: Judge, the Commonwealth has the burden of proving items which require the introduction of these pictures. We're past the [111] trial on the case. We're now where we have the burden to show vileness, et cetera. That can only been done in this way; I'm sorry. I don't know any other way to do it.

THE COURT: The motion is overruled.

MS. CARRICO: Judge, if you would note our exception to your ruling, please.

THE COURT: Four pictures, and I'm going to make them one exhibit. Do you all have any objection to that? I'm making four pictures one exhibit.

MS. CARRICO: Your Honor, I would like to have an opportunity to view those pictures. Judge, I'm going to renew my objection. We're here on the penalty phase of the Cumberland case and I think that these pictures are inflammatory and we're not trying him on vileness for what happened in Prince Edward. I think that these are unduly prejudicial to Mr. Williams to be introduced and I do object to their introduction, at least to all four of them.

THE COURT: One shows the bullet entry; I'm certainly going to allow that. I'm going to allow two.

MS. CARRICO: Your Honor, if you would note [112] our exception to your ruling.

THE COURT: You're still excepting?

MS. CARRICO: Yes, sir.

THE COURT: I'm going to allow these two as Exhibit D.

BY MR. VON SCHUCH: (Continuing)

Q Dr. Massello, would you explain the pictures, please?

A Would you like me to show the pictures?

Q Yes. Describe the injuries that you noted.

A I'm showing you two pictures here and both of them are Commonwealth's Exhibit D. The first picture is the face of the gentleman whom I performed the autopsy on, and it's taken mainly for identification purposes, but I think you can appreciate that there is blackening and charring of the skin, resulting from the effects of heat and fire.

The second part of the exhibit, the second picture, shows the back of the right side of the victim's head. This is the right ear over on this part of the picture that I am pointing to, and here is the hair, which is black, and there has been an area shaved in the back of the head which shows a gunshot wound entrance. And as opposed to being a round hole, that you would expect a [113] bullet to make, this is a very ragged, sort of star-shaped appearing wound, and this is from the effects of the muzzle of the gun being held in contact with the head at the time of



discharge, so that the gases, in addition to the bullet, actually come out of the gun and get underneath the scalp and cause splitting of the skin an they expand. So this, then, is a gunshot wound entrance with the muzzle of the gun in contact with the head.

Q Thank you, Dr. Massello. Did you have occasion to recover a bullet or a bullet jacket from the track of the wound to Mr. Villalobos?

A Yes, I did.

Q And can you describe exactly what it was that you recovered?

A Yes. This was, I believe, a jacket – A bullet and a jacket. In other words, this was a bullet which had a copper, they call it a jacket. The best way to call it is a copper sleeve or something like that, which is around it, and the bullet had actually sort of expanded or deformed itself into the shape of a mushroom when it was removed from the head. And this is what we call an intermediate caliber bullet, such as you would get with a .38 caliber bullet, a .357 bullet, or a nine millimeter caliber bullet.

Q Was that item turned over to Detective [114] Reesee for delivery to the lab?

A Yes, it was.

Q Do you have an autopsy report concerning the deceased in this case, Mr. Jeffrey Villalobos?

A Yes, I do.

MR. VON SCHUCH: Judge, I would offer that as a Commonwealth's Exhibit at this time.

THE COURT: That's E.

BY MR. VON SCHUCH: (Continuing)

Q Let me ask you then, if you would, to turn to the case of William Barton Cutter.

A Yes, I've got that.

Q Can you tell us, please, did you have occasion to perform the autopsy on the deceased in this case, Mr. William Barton Cutter?

A Yes, I did.

Q Can you tell the ladies and gentlemen of the Jury what you noted, please, in terms of injuries to Mr. Cutter?

A Yes. The most significant injury was a gunshot wound to the front of the face; and this actually went into the face through the nose, through the right side of the nose, and then went straight back through the face into the brain, and in passing through the brain, it went [115] through a part of the brain which we call the brain stem. This is the area of the brain that controls all of our vital functions, such as breathing, consciousness, heart rate, blood pressure, et cetera. And in injuring the brain stem or passing through it in this way, it resulted in the virtual instantaneous death of this individual.

The bullet continued its passage through the brain stem part of the brain, went through the back of the skull and came to lodge right beneath the scalp at the approximate location that I'm indicating with my index finger. At that point then, the bullet was recovered. Additionally to this injury, there were also burns, again virtually over the entirety of the individual's body, and there were some



very, very superficial cuts to the skin, as if a sharp type of an object, such as glass or sharp metal, razor blade, knife, what-have-you, had actually made some cuts on the top of the left side of the individual's forehead, the left eyelid, and then right above the right eyebrow, as I'm indicating with my left index finger here.

Q Could you determine whether the cuts were premortem or postmortem?

A No, I couldn't determine that.

Q Again, with the burning, was that indicated to be premortem or postmortem?

A The burning was postmortem.

[116] Q Did you have occasion to recover a bullet from the gunshot wound track which you noted in Mr. Cutter?

A Yes, I did.

Q And can you describe that for the ladies and gentlemen of the Jury?

A Again, this was an intermediate caliber copper jacketed bullet which had sort of mushroomed in its passage; the type of ammunition, again, .38 caliber, .357 caliber bullet, or a nine millimeter.

Q Do you have occasion to have pictures of the gunshot wounds to Mr. Cutter, please?

A Yes, I do.

MS. CARRICO: Judge, I am going to note an objection to the introduction of any pictures. I believe

that they are inflammatory and prejudicial. I think the same evidence can be shown by the Commonwealth by a diagram and I think these are unnecessarily inflammatory.

MR. VON SCHUCH: Judge, could we have a recess and discuss this, please?

THE COURT: Yes.

* * *

[121] (The Jury entered the Courtroom, and in the presence of the defendant and counsel, the following ensued.)

BY MR. VON SCHUCH: (Continuing)

Q Dr. Massello, I think I was at the point where I was asking you if you had a picture of Mr. Cutter to demonstrate and explain the gunshot, and so forth and so on. Would you show them that, please.

[122] A Yes. This is a picture of the decedent. What you note right away is that the front of the face, again, is blackened, and there are areas where the skin has actually blistered or peeled off, exposing the underlying white skin. But if you look there at the tip of the nose, you will see a large ragged area, and this is a wound, a bullet wound, which has been charred by fire; which, again, goes through the right nostril, through the face, and into the head, causing instantaneous death.

And I mentioned cuts on the face. This photograph does show one, where I'm indicating with my index finger, above the eyebrow and there is also a cut on the –



correction, above the left eyebrow – and then a cut on the right eyebrow, as I'm indicating with my finger.

Q And Dr. Massello, that is marked as what Commonwealth's Exhibit?

A Exhibit H.

MR. VON SCHUCH: Judge, I would offer that at this time.

BY MR. VON SCHUCH: (Continuing)

Q And I'm sorry, I forgot where I was. Did I ask you about a bullet being recovered in the gunshot wound track?

A Yes, you did.

[123] Q All right. Do you have a copy of the autopsy report involving Mr. Cutter?

A Yes, I do.

MR. VON SCHUCH: Judge, I would offer that at this time as a Commonwealth's Exhibit.

THE COURT: This is Commonwealth's Exhibit I.

BY MR. VON SCHUCH: (Continuing)

Q And I would ask Dr. Massello to remove his report concerning Mr. Atkinson, Sr. Do you have the report concerning George Atkinson, Sr.?

A Yes, I do.

Q Did you have occasion to perform the autopsy on that deceased, Mr. George Atkinson, Sr.?

A Yes, I did.

Q Can you explain to the ladies and gentlemen of the Jury what injuries you noted, please?

A Yes. Once again, this gentleman had a lethal gunshot wound, which entered through the upper lip, as I am indicating with my index finger, and then the bullet actually passed through the face once again, into the skull, going right through that vital part of the brain, which we call the brain stem. Actually, this, as opposed to being the upper brain stem, this was the lower brain stem, where your brain connects to your spinal cord.

[124] It actually cut this right in half, so there would have been complete, instantaneous paralysis of all of the muscles of his body, including the muscles going to the tongue and the breathing muscles, and virtual instantaneous death resulting from an injury to this part of the brain. The bullet, as I mentioned, went through that part of the brain we call the brain stem and then didn't stay in the head in this case, but actually exited the skull and exited the body through an exit wound located on the left side of the neck, which I am trying to indicate with my left index finger for you.

Q Did you have occasion to recover any fragments or jackets or anything of that nature in the track of the wound?

A I did not recover a bullet. I recovered some very, very small fragments or metallic chips of the bullet.

Q As in the case of Mr. Cutter and Mr. Villalobos, were these given to Officer Keesee for delivery to the lab?

A Yes, they were.



Q Do you have a picture of the injury to the deceased in this case, Mr. George Atkinson, Sr.?

A Yes, I do.

Q Would you show the ladies and gentlemen of [125] the Jury the entrance wound to the deceased? Again, was there burning on this –

A Yes. As well, there were burns involving near completely the entire body. The photograph, again, this is the decedent, and this area here, right below the nose – there's the mouth, there's the nose – and this is a very large hole here. And this particular wound, of course, has been subject to burning by a fire, so it appears somewhat distorted.

But this is the entrance wound right through the upper lip and, of course, the bullet, as I mentioned, went straight back through the teeth, through the gums, into the face, into the brain, and out the back of the head.

Q That has a Commonwealth's Exhibit number on it, is that correct?

A That is Commonwealth's Exhibit F, yes.

MR. VON SCHUCH: Judge, I would offer that at this time as a Commonwealth's Exhibit.

BY MR. VON SCHUCH: (Continuing)

Q Do you have occasion to have the autopsy report of Mr. George Atkinson, Sr.?

A Yes, I do.

MR. VON SCHUCH: I would offer that at this [126] time as a Commonwealth's Exhibit.

THE COURT: That would be Commonwealth's Exhibit J.

BY MR. VON SCHUCH: (Continuing)

Q Finally, Dr. Massello, would you remove your file concerning George Atkinson, Jr.?

A Yes, I do.

Q Did you have occasion to perform the autopsy on the deceased in this case, Mr. George Atkinson, Jr.?

A Yes, I did.

Q Can you tell the ladies and gentlemen of the Jury what you had occasion to note concerning injuries to the deceased, Mr. Atkinson, Jr.?

A Yes. Once again, this gentleman had gunshot wounds; two gunshot wounds as opposed to a single gunshot wound.

Q Was this the only victim that had two gunshot wounds?

A Of the four victims I examined, yes.

Q Tell us about these two gunshot wounds, please.

A Yes. Now there were two wounds. One wound entered the body in this location, right here above my left eye and to the outside of it. It actually went in a front-[127] to-back, left-to-right direction, as I'm trying to indicate with my finger. It went into the brain and injured the brain. And as such, in injuring the brain, it caused death. And as I said, it penetrated the brain and came over on the right side of the brain, where the bullet was recovered.



The second gunshot wound was to the left lower eyelid, right below the wound I just described to you, in this approximate location. And this bullet went in a left-to-right trajectory, as I'm indicating with my finger, and actually went through the face. It didn't actually go into the brain or the head area, it went through the face and exited on the right side, in front of the right ear. And in doing so, a wound like this, of course, over a period of hours, if left untreated, can kill you. But in this particular case, that was not the lethal wound; the lethal wound was the first wound I described to you above the left eyebrow.

Now both of these wounds, despite the fact that there was also extensive burning of the body, you could discern what we call stippling. And this stippling is little, tiny red spots, or little, tiny puncture marks of the skin that are made by fragments of metal or fragments of gunpowder. When a gun is fired, a lot more comes out than just a bullet; you'll also get smoke, you [128] also can get hot pieces of gunpowder and hot bits of metal stripped from the surface of the bullet or the inside of the barrel. And these, if they hit the skin, they will leave very small, little red marks. And both of these wounds had these, or in the general area of both of these wounds there were these little red marks.

So this would indicate that the gun was within a short distance, it was not a great distance away from the body. It was within, say, two and a-half feet or three feet of the body, or perhaps just a matter of inches, at the time one or both of these shots was discharged. So what we have here are two close range gunshot wounds to the left side of the head.

Q Do you have a picture of those as they were inflicted?

A Yes, I do.

Q Maybe the picture will show better than your description of the location.

A Yes. This is the left side. Commonwealth's Exhibit G shows the left side of the decedent's face. And up on the lateral aspect of the eyebrow you can see the first entrance wound I described, with the bullet going into the head and into the brain and causing death. And right on the lower eyelid, you can see another entrance wound; the bullet having inflicted this going through the [129] face and exiting on the right side in front of the ear. And it is somewhat difficult, because of the lighting, to actually see the stippling I was talking about, but if you look on the blistered area, or the white area of skin, you can see some very small little marks, and this is the stippling that indicates the muzzle of the gun was close to the face at the time of discharge.

And, of course, in addition we have areas of charring and burning of the skin on the left side of the face.

Q Is there a Commonwealth's Exhibit number on the back of that, please?

A Commonwealth's Exhibit G.

MR. VON SCHUCH: I offer that at this time.

BY MR. VON SCHUCH: (Continuing)

Q Do you have a copy, again, of the autopsy report of George Atkinson, Jr.?



A Yes, I do.

MR. VON SCHUCH: Judge, I would offer that as a Commonwealth's Exhibit at this time. (Commonwealth's Exhibit K.)

THE COURT: Before we get to this; as I understand it, you are offering these as to the future dangerousness of this man?

[130] MR. VON SCHUCH: Yes, sir.

THE COURT: And I want to explain to the Jury, you are not to take this into consideration as to the vileness of the crime, and so forth, that was committed here, for which you have tried today. You are not to consider that for the vileness prone. You recall there are two prongs; one as to the future dangerousness and the other one of the vileness, and so forth. This goes to the future dangerousness of the person, and that's what it's put in for, as I understand it, to corroborate the evidence of Mr. Johnny Williams.

MR. VON SCHUCH: That's correct, Judge.

BY MR. VON SCHUCH: (Continuing)

Q Dr. Massello, there were two wounds. Can you indicate to us, were there exit wounds associated with either one of those entrance wounds?

A Yes. As I mentioned, the entrance wound to the left lateral eyebrow went into the brain and there a bullet was recovered. The one to the lower eyelid went through the face and exited on the right side and no bullet was recovered.

Q The gunshot wound that the bullet was [131] recovered from, what did you have occasion to do with that?

A This was given to Investigator Keesee.

Q For delivery –

A To the firearms people at the Division of Forensic Science in Richmond.

MR. VON SCHUCH: Dr. Massell, would you answer any questions, please, that counsel has?

MS. CARRICO: No questions, Your Honor.

THE COURT: You may be excused. Doctor.

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VIRGINIA:
IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

We, the jury, on the issue joined, having found the defendant guilty of Capital Murder of Morris C. Keller, Jr.

and

having unanimously found after consideration of his past criminal record that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society,

and/or

having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved torture or depravity of mine [sic] or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder

and having considered the evidence in mitigation of the offense, unanimouly [sic] fix his punishment at death.

/s/ Bonnie B. Stinnett
FOREMAN

OR

We, the jury, on the issue joined, having found the defendant guilty of Capital Murder of Morris C. Keller, Jr. and having considered all of the evidence in aggravation and

mitigation of such offense, fix his punishment at imprisonment for life.

_____

FOREMAN

We, the jury, on the issue joined, having found the defendant guilty of Capital Murder of Mary Elizabeth Keller

and

having unanimously found after consideration of his past criminal record that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society,

and/or

having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved torture or depravity of mine [sic] or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder

and having considered the evidence in mitigation of the offense, unanimouly [sic] fix his punishment at death.

/s/ Bonnie B. Stinnett
FOREMAN

OR

We, the jury, on the issue joined, having found the defendant guilty of Capital Murder of Mary Elizabeth Keller and having considered all of the evidence in aggravation



and mitigation of such offense, fix his punishment at imprisonment for life.

_____

FOREMAN

_____

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

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COMMONWEALTH OF VIRGINIA

v.

MICHAEL WAYNE WILLIAMS

---

THE HONORABLE JOHN R. SNODDY, JR., PRESIDING

Sentencing
Cumberland, Virginia
February 22, 1994

* * *

[23] THE COURT: Stand up, Mr. Williams. Do you have anything that you would like to say or any reason why judgment should not be rendered?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

THE DEFENDANT: I mean, I'd just like to say I'm sorry to all the family members and all that. I mean, I know I did something terrible and, I mean, I know I deserve to die for it, but I mean – I mean, I know I did wrong, but in Prince Edward I didn't go there to kill anybody. I mean, the guy pulled the gun on me and I lost my head.

My head was messed up when I got to Cumberland and I did that. I mean, I ain't never done nothing like that before in my life. I mean, I'm just [24] asking for the



mercy of my mother. I know I deserve to die, because I did something horrible, but I didn't go to Prince Edward to kill nobody. I mean, I held the gun to George – I mean, I shot George, my best friend. I mean, I loved him like a brother. I grew up with him. I mean, I stood there for, I know, fifteen minutes. I mean, I couldn't do it. I didn't go there to kill anybody. I'm just asking for the mercy of my mother. I mean, I know I deserve to die and all that, I know I did something terrible and all that, I'm just asking for my mother's sake.

And I want to say I'm sorry to all of the families in Prince Edward and I want to say I'm sorry to the ones in Cumberland, but I mean, I didn't – I mean, in Cumberland I went there to do a robbery and I know I was wrong, I was extremely wrong, but in Prince Edward, I mean, I didn't go there to kill anybody. I mean, I was there, I was partying –

THE COURT: Of course, this is concerning the Cumberland case.

THE DEFENDANT: I mean, I went to Cumberland and did a robbery and I know I was wrong, and I just wanted to say I was sorry.

THE COURT: Well, as we all know, the Jury found Mr. Williams guilty and the Court affirms their findings. [25] And based on the evidence that the Court heard, the verdicts of the Jury, and the matters contained in the report made by one of my probation officers in pursuance of Section 19.2-264.5 of the 1950 Code of Virginia, as amended, I find that the sentences of death as recommended in the verdicts of the Jury are appropriate and just in these cases, and I hereby sentence you to

death in the manner prescribed by law, and the execution of said sentence shall be set for the 20th day of April, 1994. And you shall forthwith be transported to the Virginia Corrections System. So you are sentenced to two death penalties. That's what the Jury did and I'm going to affirm it. That's all. Court is adjourned.

* * *

THE COURT: The Court was delivered, prior to the hearing, a letter from Michael Williams. The letter was delivered by his attorney, Mr. Don Ford. And having shown it to the Commonwealth's Attorneys and again to Mr. Ford, the Commonwealth's Attorneys having no objection, this is also made a part of the record, this letter which I have marked delivered and filed February 22, 1994 and with my initials to it.

WHEREUPON, the proceedings were concluded.

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[Letter Originally Handwritten]

[February 22, 1994 /s/ J.S.]

Mr. Snoddy,

Im wrighting this letter to tell you that I'm sorry for All Ive done. I really am sorry I no that I've done a lot of terrible things in my life and I want to tell the family's of the victims that Im sorry to I no they wont forgive me but I want to tell them anyway what I've done Isn't forgiveable and I can understand why you would want to give



me the death penalty and I can understand why the family's of the victim's want me to have it to, I deserve it and probally worse to, but I'm never going to see the street's again with how much time I have and if I had life in Prison I feel that with all Iv'e done in my life I could talk and help somebody. Mr. Snoddy I no that this letter looks like Im trying to get out of the death penalty and your right I am but not for me. Its for my mother Mr Snoddy my mother loves me more than anything in the world I no I deserve to die I can except that because of the terrible things that I've done but my mother can't Mr. Snoddy I'm asking for her please. If you can find the mercy in your hart please spare me for my family I've caused enough Pain allready I dont want to cause anymore. the reason that I wrote this letter is whenever I try talking my mind just goe's blank because theres so much I want to say I just want everybody to no that I'm not like the Press makes me out to be I do show remor just because I don't cry doesn't mean I don't hurt for them I wrote these other letters for the victims familys to let them no how sorry I am Id like for them to have them so that they would no I am sorry for what I've done.

/s/ Michael Williams

---

LAW OFFICES
MORCHOWER, LUXTON & WHALEY

NINE EAST FRANKLIN STREET
RICHMOND, VIRGINIA 23219-2105
(804) 643-0147
Fax: (804) 648-5514

[Names And Addresses Omitted In Printing]

October 30, 1995

Sheriff Claude Meinhard
County of Cumberland
P.O. Box 71
Cumberland, VA 23040

RE: *Commonwealth of Virginia v. Michael Wayne Williams*

Dear Sheriff Meinhard:

I have been appointed to represent Michael Wayne Williams who was convicted of capital murder in your County in 1994.

I would like to meet with members of your department who were involved in the investigation and who testified at his trial. I would also like to review the investigative files of those employees.

I will be out of town from October 31 through November 9 and will contact you upon my return to discuss the appropriate arrangements.



With thanks for your cooperation and with best regards, I am

Very truly yours,

/s/ Eric D. White
Eric D. White

EDW/thj

cc: Mr. Michael Wayne Williams
Barbara L. Hartung, Esquire

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RICHMOND, VIRGINIA 23219-2105
(804) 643-0147
Fax: (804) 648-5514

[Names And Addresses Omitted In Printing]

October 30, 1995

Sheriff Gene Southall
Prince Edward County
P.O. Box 25
Farmville, VA 23901

RE: Commonwealth of Virginia v. Michael Wayne Williams

Dear Sheriff Southall:

I have been appointed to represent Michael Wayne Williams who was convicted of capital murder in your County in 1994.

I would like to meet with members of your department who were involved in the investigation and who testified at his trial. I would also like to review the investigative files of those employees.

I will be out of town from October 31 through November 9 and will contact you upon my return to discuss the appropriate arrangements.

With thanks for your cooperation and with best regards, I am

Very truly yours,

/s/ Eric D. White
Eric D. White



EDW/thj

cc: Mr. Michael Wayne Williams
Barbara L. Hartung, Esquire

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[Names And Addresses Omitted In Printing]

October 30, 1995

Warren B. Von Schuch, Esquire
Commonwealth Attorney's Office
County of Chesterfield
P.O. Box 25
Chesterfield, VA 23832

Donald R. Curry, Esquire
Office of the Attorney General
Commonwealth of Virginia
900 East Main Street
Richmond, VA 23219

Re: Michael Wayne Williams v. Warden

Gentlemen:

Michael Wayne Williams was convicted of capital murder and sentenced to death in early 1994, after a jury trial in Cumberland County. I have been appointed to represent Mr. Williams on his state habeas petition and am being assisted by The Virginia Capital Representation Resource Center.

Pursuant to the new rule promulgated by the Supreme Court, I have until December 31, 1995, to file the habeas corpus petition in the Virginia Supreme Court. I can only assume that one or both of you have access to the prosecutorial files in this case. Given the time frame, I



decided to skip initial contacts by phone and make this formal request.

Recently, the United States Supreme Court decided *Kyles v. Whitley*, 1995 WL 227644 (April 19, 1995), a capital case that stated no new law but rather reaffirmed the prosecutorial obligations of disclosure set forth in a series of cases: *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and *United States v. Bagley*, 473, U.S. 667 (1985). The basic Brady principles include the following. 1) There is no distinction between exculpatory and impeachment evidence for Brady purposes. 2) The duty of disclosures exists irrespective of any request by the defendant. 3) All favorable evidence relative to guilt or punishment is material, and error occurs "if there is a reasonable probability" that with disclosure to the defense the result would have been different. In *Kyles* the Court explicitly stated that proof of materiality does *not* require proof by preponderance of the evidence that disclosure would result in *acquittal*. Nor does it require the defendant to demonstrate that the evidence would be insufficient to convict once the inculpatory evidence affected by the nondisclosure is removed from the case, i.e., materiality is not determined by a sufficiency of the evidence test. Moreover, materiality is to be judged by viewing all nondisclosed evidence collectively rather than item by item.

While reaffirming these basic principles, the *Kyles* court also emphasized the obligations imposed on prosecutors to weigh the net effect of all nondisclosed evidence, to *learn* of favorable evidence known to government agents (including police), and to make disclosure "when the point of 'reasonable probability is

reached.' " A prosecutor cannot avoid learning about evidence which may effect confidence in the outcome of the trial or the punishment. Moreover, a prosecutor has a continuing duty of disclosure. *Mooney v. Holohan*, 294 U.S. 103, 108 (1935).

The Rules of the Supreme Court of Virginia address these same concerns. DR 8-102(4) specifically requires the prosecutor or other government lawyer to "make timely disclosure . . . of the existence of evidence . . . that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment." The Rules in EC 8-10 address the responsibilities of the prosecutor and include the following: "The prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecution's case or aid the accused." *See Lemons v. Commonwealth*, 446 S.E.2d 158, 160-61 (Va. App. 1994). *Stotler v. Commonwealth*, 346 S.E.2d 39, 41 (Va. App. 1986).

Against this background, I am now requesting that you inspect and review all materials and evidence in the possession, custody or control of the Commonwealth or its agents pursuant to the principles of *Kyles/Brady* that are material to the issues of Williams' guilt or sentence for capital murder. These materials may include, but are not limited to, to the following:

1. All reports of physical or mental examinations, scientific tests, or experiments conducted in connection with the investigation of the offense, including but not limited to:



(a) All fingerprint and palmprint exemplars, fingerprint samples, comparisons and opinions of fingerprint experts, and all documents relating to those opinions;

(b) All psychological test or polygraph examinations performed upon any prosecution witness and all documents referring or relating to such tests;

(c) All ballistic tests and/or examinations conducted on any weapon or ammunition or portion thereof connected to the offense;

2. Any and all records and information revealing prior criminal convictions or guilty verdicts or juvenile adjudications, including but not limited to the "rap sheet" of each prosecution witness through the current date.

3. Any and all records and information revealing prior or subsequent misconduct, criminal acts, or bad acts of each prosecution witness, including without limitation allegations of criminal conduct of which the prosecution knows or through reasonable diligence should have reason to know.

4. Any and all such considerations or promises of consideration given during the course of the investigation and trial of this case by any law enforcement officials, including prosecutors or agents, police, or informers, to or on behalf of any witness the prosecutor called at trial, or any such consideration or promises expected or hoped for by any such witness at any future time. Such consideration refers to anything which arguably could be of value or use to a witness, including, but not limited to

formal or informal, direct or indirect, promises of leniency, favorable treatment, or recommendations or other assistance with respect to any pending or potential criminal, parole, probation, pardon, clemency, civil, administrative or other matter involving the state or federal government, any other authority or other parties; payments or money, rewards or fees, witness's fees, and special witness's fees; provisions of food, clothing, transportation, legal services, or other benefits; placement in a special protection program, informer status of the witness, and letters to anyone informing the recipient of the witness's cooperation; recommendations concerning employment; and anything else which arguable [sic] could reveal an interest, motive, or bias in the witness in favor of the prosecution or against Williams' or act as an inducement to testify or to color the witness's testimony.

5. Any and all statements – formal and informal, oral or written – by the prosecution, its agents and representatives to any person (including counsel for such person) whom the prosecution called as a witness at trial pertaining in any way to the possibility, likelihood, course, or outcome of any government action – state or federal, criminal or civil – against the witness or anyone related by blood or marriage to the witness.

6. Any and all threats, express or implied, direct or indirect, or other coercion directed against any witness the prosecutor called at trial; criminal prosecutions, investigations, or potential prosecutions pending or which could be brought against such witnesses, any probationary parole, deferred prosecution, or custodial status of any such witness; and any other pending or potential legal disputes or transactions involving any



such witness and the state or federal government, or over which the state or federal government had real, apparent or perceived influence.

7. A list of any and all requests, demands, or complaints made to the prosecution by the witness which arguably could have been developed on cross-examination to demonstrate any hope or expectation on the part of the witness for favorable State action in his behalf (regardless of whether or not the State had agreed to provide any favorable action).

8. Any material not otherwise listed which reflects or evidences the motivation of the witness either to cooperate with the prosecution or any bias or hostility against Williams.

9. A copy of all medical and psychiatric reports known to the prosecutor concerning any witness the prosecutor called at trial which arguable affected the witness's credibility, ability to perceive, or relate or recall events.

10. Any written or oral statements, whether or not reduced to writing, made by any potential prosecution witness which in any way contradicted or was inconsistent with or different from other oral or written statement he had made, and any such statements made by any person, whether a witness or not, which in any way contradicted, was inconsistent with, or difference from any statements made by a prosecution witness.

11. The names and addresses of all persons whom the prosecution, its agents and representatives believed

had relevant knowledge and/or information with reference to the offense of conviction but whom the prosecution did not call as witnesses at trial.

12. Copies of any and all records of law enforcement agencies reflecting intradepartmental disciplinary action taken against any law enforcement official who testified in this proceeding.

The following list of individuals who testified at the guilt phase for the Commonwealth are those in which we are particularly interested. We expressly request that you consider their testimony and relationship with the Commonwealth in view of the requests made in this letter: Jeffrey Alan Cruse, Jose Albert Lozano, Verna Lozano James.

In addition to the specific materials requested in paragraphs 1-12, please provide copies of the following material which were given to defense counsel prior to or at the time of trial (according to the transcript and/or correspondence):

1. Statements of any witnesses obtained by any law enforcement official prior to trial.

2. Criminal records of Jeffrey Cruse and any prosecution witnesses.

3. Autopsy report and "Summary and Comment" from Medical Examiner on the victims, Mr. and Mrs. Keller.

4. All Certificates of Analysis.



Finally, please provide copies of:

5. Any and all search and arrest warrants, if any, and supporting affidavits and returns.

6. A statement of whether any identification procedures (line-up, show-up, photo spread) were employed in Mr. Williams' case, the nature and date of each such procedure, the witness involved on each date and the result, and copies of all police reports of such procedures. Where a photo spread or line-up was employed, please provide a photograph where available. Please provide a copy of the photograph of Williams' used in any such procedure or during investigation of the offense.

I explicitly request that all files, records, evidence, and any materials related to this case be preserved whether those materials are now in your possession or in the possession of your agents.

I will be out of town from October 31, 1995 through November 9, 1995. I will follow-up upon my return. Your cooperation will be greatly appreciated.

Very truly yours,

/s/ Eric D. White
Eric D. White

EDW/thj
cc: Mr. Michael Wayne Williams
Barbara Hartung, Esquire

(SEAL)

COMMONWEALTH of VIRGINIA

*Office of the Attorney General*
*Richmond 23219*

[Address Omitted In Printing]

November 1, 1995

Eric D. White, Esquire
Morchower, Luxton & Whaley
Nine East Franklin Street
Richmond, Virginia 23219-2105

Re: Michael Wayne Williams

Dear Eric:

This is in response to your letter to Warren Von Schuch and me dated October 30, 1995. I have advised Warren, and he agrees, that because I am handling the habeas corpus proceedings in this case on behalf of the Commonwealth, I should be the one to respond to your letter.

First of all, I take issue with your assertion that under the Virginia Supreme Court's new rule – Rule 5:7A, which does not even become effective until November 15, 1995 – you "have until December 31, 1995, to file the habeas corpus petition in the Virginia Supreme Court." You have, in fact, already filed your petition in the Supreme Court and I have filed a responsive pleading. Your petition was accompanied by a motion for leave to amend which, as far as I know, remains pending. Whether the Court will grant leave to amend and, if so, how long it will give you to amend the petition, are thus open questions. Unless you have received information from the



Court that I have not, I do not believe there is any basis for your apparent assumption that you have until the end of the year to file an amended petition.

With respect to your request – much like the request a defense attorney might file when a criminal case is being prepared for trial – that Warren and I "inspect and review" all materials "in the possession, custody or control of the Commonwealth" for the purpose of identifying material, exculpatory evidence, we have no intention of doing so. Michael Williams' trial attorneys filed a lengthy request for exculpatory evidence prior to trial (R. 44) and the Commonwealth responded to the request at that time. This case, however, no longer is in a posture where the Commonwealth is a "prosecutor." You have filed a civil habeas corpus proceeding in which the Commonwealth is the defendant. I know of no authority that requires the Commonwealth, as the respondent in a civil habeas proceeding, to comply with such a request from petitioner's counsel.

As to your more general discovery request, please be advised that discovery in habeas corpus matters is governed by Rule 4:1(b)(5) and is not authorized "without prior leave of . . . court." As you know, the defense bar lobbied to have discovery provisions included within Rule 5:7A and the Supreme Court rejected those efforts. As a practical matter, moreover, I certainly do not see why the Commonwealth should now provide Williams with materials which, by your own admission, "were given to defense counsel prior to or at the time of trial."

Please let me know if you have any questions about the Commonwealth's position.

Very truly yours,

/s/ Don
Donald R. Curry
Senior Assistant Attorney General
Criminal Litigation Section



**IN THE SUPREME COURT OF VIRGINIA**
**AT RICHMOND**

**MICHAEL WAYNE WILLIAMS,**

**Petitioner.**

**v.**

**RONALD ANGELONE, DIRECTOR**
**VIRGINIA DEPARTMENT OF CORRECTIONS,**

**Respondent.**

## PETITIONER'S MOTION FOR EXPERT SERVICES

(Received Nov. 30, 1995)

Petitioner, Michael Wayne Williams, moves the Court for the appointment of (1) an attorney experienced and knowledgeable in the defense of capital cases in Virginia, to assist him as a potential expert witness, (2) a forensic neuropsychiatrist; (3) a ballistics expert to review the tests performed on firearms and bullets introduced at petitioner's trial and to conduct independent tests; and, (4) an investigator to examine issues relating to the testimony and status of the co-defendant, Jeffrey Cruse, and issues relating to the jury's consideration of this case.

### I. THE RIGHT TO EXPERT SERVICES.

Under §14.1-183 of the Virginia Code, an indigent person may sue or defend a suit without paying fees or costs, and shall be provided with all "needful services and process" related to that suit. This statute is broadly worded, and covers the situation at hand. As discussed below, the expert services requested are necessary to petitioner's prosecution of his habeas corpus petition.

Such "needful services" should be provided to petitioner on the basis of Va. Code §14.1-183.

In addition, payment of such services is provided for in the Commonwealth's budget appropriations. The State's budget provides:

> (A) Out of the amounts for Pre-Trial, Trial and Appellate Processes shall be paid: (3) The State's share of *expenses incident to the prosecution of a petition for a writ of prosecution of a petition for writ of habeas corpus* by an indigent petitioner, including payment of counsel fees as fixed by the Court; the expenses shall be paid upon receipt of an appropriate order from a circuit court. (Emphasis added).

1993 Va. Acts of Assembly, Ch. 994, para. 26(3). This item clearly is not limited to counsel fees, since they are identified as only a type of reimbursable expense. Thus, the General Assembly has clearly authorized the payment of all other "expenses incident to the prosecution of a petition for a writ of habeas corpus."

Based on both §14.1-183 and the applicable sections of the 1991 Acts of Assembly, the trial Court has authority to order the Commonwealth to pay for any expenses necessary to an indigent petitioner's prosecution of a writ of habeas corpus.

Furthermore, in *Murray v. Giarratano*, 492 U.S. 1 (1989), six justices agreed that "collateral proceedings are a central part of the review process of prisoners sentenced to death." *Id.* at 14 (Kennedy, Jr., concurring). Those six justices (the four dissenters and Justices Kennedy and O'Connor, who concurred in the judgment)



recognized that, given the complexity of capital post-conviction jurisprudence, the provision of legal services to indigent prisoners under sentence of death was necessary to provide "meaningful access" to the post-conviction process. *Id.*

Justice Kennedy concurred in the judgment because "no prisoner on death row in Virginia has been able to obtain counsel to represent him in post-conviction proceedings . . . " 492 U.S. at 14-15. His decision upholding Virginia's system was predicted on his belief that Virginia did have a system for providing "meaningful access" that satisfied its constitutional obligations. *Id.* However, if Virginia's statutes are interpreted so as not to authorize payment for expert services essential to the prosecution of a habeas corpus petition by an indigent death sentenced prisoner, then it clearly is not satisfying its constitutional burden.

## II. THE SERVICES NEEDED.

To prevail on any claim of ineffective assistance of counsel, petitioner must establish that his counsel's performance "fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To establish that standard, expert testimony as to common practice in capital cases in Virginia is relevant. Thus, as to ineffective assistance claims raised in the habeas petition, the services of an attorney who is experienced in the defense of capital cases is appropriate.

Petitioner must also establish in an ineffective assistance of counsel claim that he was prejudiced by counsel's omissions. Petitioner alleges that trial counsel

should have investigated the plea negotiation, arrangements, discussions, meetings, etc. between the Commonwealth and petitioner's co-defendant, Jeffrey Cruse. Trial counsel did not call the co-defendant's attorneys as witnesses in an effort to determine the status of any plea arrangements, agreements or negotiations between the Commonwealth and Jeffrey Cruse. Counsel for the petitioner has been unable to locate Jeffrey Cruse to conduct an independent investigation into these issues. Counsel is advised by the Department of Corrections that the Department is unable to locate Jeffrey Cruse. This inability suggests arrangements or agreements which were not disclosed to petitioner prior to his trial. Clearly, the credibility of the testimony offered by the co-defendant, Jeffrey Cruse, was critical to the petitioner's defense.

A ballistic expert is necessary to review the tests done on the gun which was used in the commission of the crimes for which petitioner was convicted as well as all bullets recovered from the crime scene. No ballistic expert was employed by trial counsel. Clearly, such an expert would have been appropriate to insure effective cross-examination of the co-defendant, law enforcement officers, the medical examiner and the ballistics expert who testified on behalf of the Commonwealth.

Petitioner also alleges that irregularities, improprieties and omissions exist with regard to the empaneling of the jury. An investigator is necessary to examine all circumstances relating to the empanelment of the jury and the jury's consideration of the case. Petitioner is asking the court to appoint Doris Pye an investigator previously appointed by this Court in other capital cases to assist petitioner in this case.



While petitioner was assisted at trial by Dewey Cornell, Dr. Cornell is not a forensic neuropsychiatrist and is not qualified to assess any neurological or neuropsychological damage the petitioner may have sustained at birth as a result of oxygen depravation [sic] stemming from birthcord being wrapped around petitioner's neck. A cases to assist petitioner in this case. [sic]

While petitioner was assisted at trial by Dewey Cornell, Dr. Cornell is not a forensic neuropsychiatrist and is not qualified to assess any neurological or neuropsychological damage the petitioner may have sustained at birth as a result of oxygen depravation [sic] stemming from birthcord being wrapped around petitioner's neck. A forensic neuropsychiatrist would be able to conduct a full range of examinations to insure that petitioner was not deprived of his right to have relevant evidence in mitigation placed before the fact finder.

Similarly, expert psychiatric assistance is needed to support claims to be made concerning the preparation and presentation, or lack thereof of expert testimony during the sentencing phase of the trial. It is obviously impossible for petitioner to meet his burden of demonstrating prejudice under *Strickland* as to those claims without expert assistance. Thus, where mental health issues are raised in habeas corpus, expert services are necessary for the post-conviction process to be meaningful, and should be granted.

The allegations in the petition present a sufficient factual basis for this request.

Wherefore, petitioner moves this Court for appointment of expert services as described above.

MICHAEL WAYNE WILLIAMS

By /s/ Eric D. White
Counsel

[Certificate Of Service Omitted In Printing]

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MORCHOWER, LUXTON & WHALEY

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RICHMOND, VIRGINIA 23219-2105
(804) 643-0147
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[Names And Addresses Omitted In Printing]

**HAND-DELIVERY**

December 1, 1995

Donald Curry, Esquire
Senior Assistant Attorney General
Commonwealth of Virginia
900 East Main Street
Richmond, VA 23219

RE: *Michael Wayne Williams v. Angelone*

Dear Don:

I have been unable to locate Mr. Williams' co-defendant in Cumberland County, Jeffrey Allan Cruse. I will assume that you can appreciate the need for me to contact Mr. Cruse as well as his attorneys.

While I was able to obtain his inmate number, 215584, his date of birth, 12/11/67, and his social security number, 315-76-3445, the inmate locator service at the Department of Corrections advised that no other information was available.

Specifically, I was advised that Mr. Cruse's file is on "administrative verification" which is a paraphrase for protective custody. To get further information, I must go through Mr. Angelone. As Mr. Angelone is your client, I thought it appropriate to contact you.

The individual I spoke with at the inmate locator service, noting that the file on the computer didn't even reflect the nature of Cruse's convictions, commented that the file was "really locked up" and that someone "really didn't want him found". I want to speak to Mr. Cruse. I don't care where I speak to him but I think I am entitled to speak to him. I think I am also entitled to know the circumstances surrounding his entry into protective custody. I find it hard to believe that arrangements for this were not made prior to his testimony against my client in Cumberland County Circuit Court.

Since Mr. Angelone is your client and has the authority to disclose Cruse's location, I will expect to hear from you within a week. If I receive no response, I will assume that I have to petition the Supreme Court or the Circuit Court of Cumberland County for relief.

With best regards, I am

Very truly yours,

/s/ Eric D. White
Eric D. White

EDW/thj

cc: Mr. Michael Wayne Williams

---



[SEAL]

*COMMONWEALTH of VIRGINIA*

*Office of the Attorney General*
*Richmond 23219*

[Address Omitted In Printing]

December 11, 1995

Eric D. White, Esquire
Morchower, Luxton & Whaley
Nine East Franklin Street
Richmond, Virginia 23219-2105

Re: Jeffrey Cruse

Dear Eric:

This is in response to your letter dated December 1, 1995, concerning Jeffrey Cruse. Cruse, in fact, is imprisoned outside of Virginia. I will not reveal, however, his location to you or anyone else who might disclose the location to your client, Michael Williams.

With best wishes, I remain

Very truly yours,

/s/ Don
Donald R. Curry
Senior Assistant Attorney General
Criminal Litigation Section

---

VIRGINIA:

IN THE SUPREME COURT

MICHAEL WAYNE WILLIAMS,

Petitioner

v. Record No. 951589

J. D. NETHERLAND, WARDEN,

Respondent

## OPPOSITION TO MOTION FOR EXPERT SERVICES

(Received Dec. 6, 1995)

The Warden, by his counsel, opposes the petitioner's motion for expert services, and says as follows:

1. This is a capital habeas corpus case where Williams filed his habeas petition in this Court on August 30, 1995. The Warden filed a motion to dismiss on September 8, 1995. The petition remains pending, as does petitioner's motion for leave to file an amended petition.

2. Williams now has filed a motion for expert services in which he has asked the Court to appoint the following: an attorney who is an expert in the trial of capital cases; a forensic neuropsychiatrist; a ballistics expert; and an investigator. The requests should be denied.

3. After acknowledging that he is not entitled to the appointment of the requested experts unless such appointments somehow are "necessary" or "essential" to his habeas case (Motion at 1-3), Williams merely argues



that such services would be "appropriate" or may produce "relevant" evidence. (Motion at 3-4). Clearly, the fact that an appointment might be "appropriate" or might produce "relevant" evidence is not the same as proof that the requested appointments are "necessary" or "essential" to his case.

### *Expert Attorney*

4. Williams does not specify the connection, but suggests that the appointment of an expert attorney somehow is relevant to a claim that trial counsel should have investigated whatever plea arrangements there were between the Commonwealth and Williams' co-defendant, Jeffrey Cruse. No such claim, however, is articulated in the petition Williams has filed in this Court. Moreover, Williams has made no proffer that he has interviewed trial counsel and that trial counsel has informed him that the matter was not investigated. Quite to the contrary, the record shows that the plea arrangements between the Commonwealth and Cruse were disclosed fully at trial and that defense counsel were aware of them. (App. 935-977).[1]

5. Williams has proffered nothing to this Court that would support a conclusion that the appointment of an attorney expert is "essential" to his case. Indeed, if this Court were to grant Williams' request, there would be no principled way to deny such a request in any capital case.

---

[1] The citation to the record refers to the Joint Appendix filed in this Court on direct appeal.

*Forensic Neuropsychiatrist*

6. Williams admits that, at his request, the trial court appointed Dr. Dewey Cornell to assist him at the time of trial. Dr. Cornell, a clinical psychologist, testified on Williams' behalf at the capital sentencing proceeding. *See Williams v. Commonwealth*, 248 Va. 528, 548-549, 450 S.E.2d 365, 378 (1994). Williams now contends that this Court should appoint him a neuropsychiatrist "to conduct a full range of examinations to insure that [Williams] was not deprived of his right [to present mitigation evidence]." (Motion at 5). In other words, Williams asks this Court to authorize a "fishing expedition" to see *whether* there was additional medical mitigation evidence that could have been presented but was not presented. Obviously, this Court should not license such an expedition. Williams has proffered nothing to this Court that could not be proffered by *any* death row inmate who is merely hoping to find additional mitigation evidence.

*Ballistics Expert*

7. Williams' motion regarding a ballistics expert is nothing short of frivolous. Williams and his co-defendant, Cruse, admitted that they shot the victims in this case. The ballistics evidence as to which of the victim's wounds were inflicted with which caliber weapon is undisputed, and indisputable. The issue in this case was not one of ballistics; rather, it was a question of which defendant shot which victim: if the jury believed Cruse's testimony, then Williams fired all five of the shots that killed Mr. Keller and two of the three shots that killed Mrs. Keller; if the jury believed Williams' testimony, then Cruse fired all



three shots that killed Mrs. Keller and all but one of the shots that killed Mr. Keller. (App. 915-919, 1205-1206). In short, the issue in this case was credibility, *not* ballistics.

8. Merely alleging that trial counsel should have employed a ballistics expert and asserting that this Court now should appoint such an expert to see whether trial counsel should have done so (Motion at 4), clearly is insufficient to warrant the relief Williams is requesting. Williams' proffer clearly would be insufficient to warrant the appointment of a ballistics expert to assist the defense *at trial*. *See Caldwell v. Mississippi*, 472 U.S. 320, 323-324 n.1 (1985). *A fortiori*, then, the proffer is insufficient to warrant such an appointment in a collateral, habeas proceeding.

*Investigator*

9. This request also is frivolous. Trial counsel requested an investigator and the trial judge denied the request. This Court affirmed that decision because the claim raised on appeal was not the same as the one Williams raised at trial. *Williams*, 248 Va. at 539, 450 S.E.2d at 373.

10. Now, Williams is requesting that this Court appoint a private investigator to interview the jurors in this case. In conclusory fashion, Williams alleges that there were "irregularities, improprieties and omissions . . . with regard to the empaneling of the jury." On the basis of such a conclusory allegation, which could be made by any prisoner in *any* case, this Court certainly should not authorize the expenditure of taxpayer funds

for an investigator to intrude upon the private lives of the jurors.[2]

11. Williams was not entitled to an investigator at trial because his proffer of need was conclusory and insufficient. (See attached order). *See, e.g., Gray v. Commonwealth*, 233 Va. 313, 331, 356 S.E.2d 157, 166-167, *cert. denied*, 484 U.S. 873 (1987). He certainly is not entitled to an investigator for his habeas proceedings on the basis of a similarly conclusory proffer.

***Conclusion***

Williams has failed to demonstrate that the experts he has requested are, in any reasonable sense, "necessary" or "essential." This Court, therefore, should deny his motion.

Respectfully submitted,

J. D. NETHERLAND, WARDEN

By: /s/ Donald R. Curry
Counsel

[Certificate Of Service Omitted In Printing]

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[2] Petitioner asserts that the person whose services he is requesting, Doris Pye, is "an investigator previously appointed by this Court in other capital cases." (Motion at 4). The Warden's counsel, however, is unaware of any instance in which this Court has appointed Ms. Pye, or any other investigator, in a capital case.



Virginia:

In the Circuit Court of Cumberland County.

Commonwealth of Virginia

Vs. Order

Michael Wayne Williams
SSN: 23025-0805
Birth Date: 1-25-68

Offense Date: 2-27-93

This 15th day of September, 1993, came to defendant, Michael Wayne Williams, with his counsel, R. Donald Ford and Lucretia Carrico, and presented to the Court his motion for appointment of an expert investigator; and also came the Attorneys for the Commonwealth for the County of Cumberland in opposition to said motion.

It appearing to the Court upon review of the aforesaid motion, argument of counsel, and order entered on September 15, 1993, denying at that time the defendant's motion for appointment of expert investigator and taking the motion under advisement for any further evidence which the defendant chose to offer in this matter, that there has been no evidence submitted by the defendant to establish the need for the appointment of an expert investigator, and therefore that such motion should be denied, it is therefore ordered that the motion is denied.

ENTER:

/s/ Illegible, Judge

DATE: Nov. 19, 1993

Seen and objected to:

/s/ R. Donald Ford
R. Donald Ford

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VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

MICHAEL WAYNE WILLIAMS,

Petitioner,

v. Record Number: 951589

WARDEN, MECKLENBURG
CORRECTIONAL CENTER.

Respondent.

MOTION FOR PRODUCTION OF JEFFREY ALLEN CRUSE AND DISCOVERY RELATING TO JEFFREY ALLEN CRUSE

Comes now the petitioner, Michael Wayne Williams, by counsel, and moves this Court to Order the Production by the Commonwealth of Virginia, Jeffrey Allen Cruse, the co-defendant of the petitioner who is currently incarcerated at an undisclosed location. Petitioner also moves this Court to Order that the Commonwealth produce all documentation relating [sic] the incarceration of Mr. Cruse from the date of his first incarceration in connection with capital murder charges in Cumberland County. In support hereof, counsel submits the following:

1. Jeffrey Allen Cruse was charged with capital murder of Mr. and Mrs. Keller in Cumberland County and was the co-defendant of the petitioner.

2. Cruse testified against the petitioner at petitioner's trial in Cumberland County Circuit Court which began on January 3, 1994.

3. The Commonwealth's case against the petitioner was based upon the testimony of Cruse.

4. The files of trial counsel as well as the record in this case do not adequately reflect information or discovery relating to plea agreements between the Commonwealth and Jeffrey Allen Cruse. Accordingly, counsel must talk to Mr. Cruse and obtain records relating to his incarceration.

5. By letter of December 1, 1995, counsel for petitioner advised the attorney general that he was unable to locate Mr. Cruse or obtain documentation because the Virginia Department of Corrections would not make such information available.

6. By letter of December 11, 1995, Donald R. Curry, Senior Assistant Attorney General, advised counsel that Mr. Cruse was imprisoned outside of Virginia, and refused to disclose his location.

Wherefore, petitioner moves this Court for entry of an Order directing the Commonwealth to produce Jeffrey Allen Cruse at a location to be chosen by the Attorney General and to provide counsel for the petitioner with documentation relating to the incarceration of Jeffrey Cruse since his first incarceration on charges of capital murder in Cumberland County.

MICHAEL WAYNE WILLIAMS

By /s/ Eric White
Of Counsel

[Certificate Of Service Omitted In Printing]

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**VIRGINIA:**

**IN THE SUPREME COURT**

**MICHAEL WAYNE WILLIAMS,**

**Petitioner**

**v.** **Record No. 951589**

**J. D. NETHERLAND, WARDEN,**

**Respondent**

## WARDEN'S OPPOSITION TO PETITIONER'S MOTION FOR DISCOVERY

(Received Jan. 16, 1996)

The Warden of the Mecklenburg Correctional Center, by counsel, opposes the petitioner's motion for discovery, and says as follows:

1. The petitioner has been sentenced to death for his role in shooting to death Mr. and Mrs. Morris C. Keller in Cumberland County in February of 1993. At petitioner's sentencing proceeding, the Commonwealth proved, and petitioner admitted, that he shot and killed four other persons in Prince Edward County in December of 1992. *See generally Williams v. Commonwealth*, 248 Va. 528, 547, 450 S.E.2d 365, 377 (1994).

2. Petitioner's co-defendant in the Keller murder cases, Jeffrey Cruse, testified against him at trial. For his protection, Cruse currently is incarcerated at a location outside of Virginia that the respondent has refused to disclose to petitioner. Petitioner now has filed a discovery motion in this habeas corpus proceeding, asking this Court for an order directing the respondent to make Cruse available to petitioner's counsel so that he may be

interviewed about the possible existence of plea agreements. Williams also asks the Court to order the respondent to produce "documentation relating to the incarceration of . . . Cruse since his first incarceration [for the Keller murders]." (Motion at 2).

3. Petitioner certainly is not entitled to discovery as a matter of right in this habeas corpus proceeding. Rule 4:1(b)(5); *Yeatts v. Murray*, 249 Va. 285, 289, 455 S.E.2d 18, 21 (1995) (habeas discovery is matter of judicial discretion). Nor has he shown specific facts warranting discovery in this case. Indeed, he has done nothing more than assert that Cruse testified against him at trial and that petitioner's counsel "must talk to Mr. Cruse and obtain records relating to his incarceration." (Motion at 2).

4. The trial record in this case demonstrates that the plea arrangements between the prosecution and Cruse were fully disclosed and that petitioner's trial counsel were aware of the relevant facts. (App. 935-977).* Indeed, although Cruse once had reached a conditional plea agreement with the Commonwealth by which he would be spared the death penalty, his failure to tell the prosecution about his involvement in the rape of Mrs. Keller resulted in the revocation of the agreement and, at the time Cruse testified against petitioner, there was no plea agreement in existence. (App. 976). *See Williams*, 248 Va. at 534, 542, 450 S.E.2d at 370, 374.

5. Petitioner has not proffered that he has interviewed trial counsel and that trial counsel were unaware

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* The citation to the record refers to the Joint Appendix filed in this court on direct appeal.



of the relevant facts. Nor has petitioner proffered that he has interviewed Cruse's trial attorneys, or that Cruse (or his attorneys) is likely [sic] consent to an interview by petitioner's counsel. Finally, petitioner has not demonstrated, or even alleged, that there is any reason to believe that the information which was presented at trial regarding Cruse's plea agreements, or lack thereof, was in any way inaccurate. Seen in the proper light, therefore, petitioner's discovery request is nothing but a request for this Court to sanction a proverbial "fishing expedition." *See Rakes v. Fulcher*, 210 Va. 542, 545-546, 172 S.E.2d 751, 755 (1970) (movant must demonstrate "good cause" for discovery).

6. Without the benefit of a plea agreement, Cruse took considerable risk in testifying against petitioner – a dangerous individual who has murdered no fewer than six persons. For Security reasons related to his protection from Williams, Cruse is incarcerated outside the Commonwealth. Petitioner clearly has failed to present any grounds that would warrant this Court ordering the respondent to provide Williams access to Cruse or to documents concerning his incarceration. *See generally Cardwell v. Director*, Record No. 951593 (Dec. 15, 1995) (denying discovery motion *inter alia*).

7. For the foregoing reasons, this Court should deny the motion for discovery.

Respectfully submitted,

J. D. NETHERLAND, WARDEN

By: /s/ Donald R. Curry
Counsel

[Certificate Of Service Omitted In Printing]

VIRGINIA

IN THE SUPREME COURT OF VIRGINIA

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MICHAEL WAYNE WILLIAMS, #165709
Mecklenburg Correctional Center
Boydton, Virginia

Petitioner

v.

J.D. Netherland, Warden,
Mecklenburg Correctional Center
Virginia Department of Corrections
Richmond, Virginia

Respondent.

RECORD NUMBER: 951589

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PETITION FOR WRIT OF
HABEAS CORPUS AD SUBJICIENDUM

Eric D. White
Morchower, Luxton & Whaley
Nine East Franklin Street
Richmond, VA 23219
(804) 643-0147
Attorney for Petitioner

* * *



**D. COUNSEL DID NOT EFFECTIVELY INVESTIGATE OR CONFRONT THE PETITIONER'S CO-DEFENDANT, JEFFERY ALAN CRUSE, OR THE ISSUE OF CRUSE'S PLEA AGREEMENT WITH THE COMMONWEALTH.**

* * *

138. Counsel failed to effectively investigate and confront the nature, extent and existence of the plea agreement between the Commonwealth and Jeffery Cruse. While there is no indication from the record or from counsel's files that counsel attempted to interview Cruse prior to trial.

139. There is nothing in the record or in counsel's files to suggest that counsel attempted to interview Cruse's attorneys regarding the nature, extent or existence of a plea agreement or what Cruse's attorneys may have told him about his testimony.

There is nothing in the record or in counsel's files to suggest that counsel ever interviewed James Baber, the first attorney who was appointed to represent Cruse at the time he entered the plea agreement. Counsel did not call either Commonwealth's Attorney, Von Schuch or Commonwealth's Attorney, Woodson, as a witness. As Von Schuch's questioning of Cruse addressed Cruse's dealing with the Commonwealth's Attorneys, both Commonwealth's Attorneys placed themselves in the position of being material witnesses.

140. Counsel did not subpoena either of Cruse's attorneys, Donald Blessing or Lee Harrison as witnesses. There is nothing in the record or in counsel's file to suggest that counsel discussed with any law enforcement

officers the nature, extent or details of any statements made by Cruse to law enforcement officers. (In fact, counsel failed to cross-examine Virginia State Police Agent Tyree regarding his interviews with Cruse or Cruse's reasons for obtaining a lawyer. Cross-examination of Tyree would have established that Cruse was never specifically asked about the rape during the statement in which Cruse omitted reference to the rape).

141. This substantial and extensive series of omissions and errors regarding the need to confront and investigate the most important witness in the Commonwealth's case at the guilt/innocence phase was undeniably deficient. The prejudice to the petitioner is clear: Cruse's testimony was essentially unimpeached and became the basis for not only the petitioner's convictions but his death sentences as well. It is clear that this ineffective attempt at impeachment renders the petitioner's sentences less reliable. As petitioner has established deficient performance and prejudice, he has established constitutional violations of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

142. Because the argument was made during rebuttal. Counsel had no opportunity to comment on, argue the implications of or otherwise pursue the Commonwealth's statement that if Cruse lies, he dies. Because counsel failed to object to that argument, the petitioner suffered from the prejudice that the jury was left with the self-fulfilling prophecy that petitioner is convicted, Jeffery Cruse must be telling the truth. Counsel's failure to object rendered his performance wholly deficient and ineffective. On this point, if counsel had objected, the result would surely have been different.



* * *

## IV. THE PROSECUTION ENGAGED IN SUBSTANTIAL MISCONDUCT

408. Prosecutorial misconduct so infected the trial as to deny petitioner due process of law and to render the sentencing determination unreliable, in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, Sections 1, 8, 9, 11 of the Constitution of Virginia.

### A. THE PROSECUTION FAILED TO PRODUCE MATERIAL AND EXCULPABLE EVIDENCE REGARDING THE CO-DEFENDANT JEFFERY ALAN CRUSE

409. On redirect examination of Cruse, Commonwealth's Attorney, Von Schuch questioned Cruse about his original statements to law enforcement authorities and the plea agreement which was entered into between Cruse, his attorney at the time, Mr. Baber, and Commonwealth's Attorney, Woodson. Von Schuch offered the written plea agreement as Commonwealth's Exhibit 13. (R. 975). Prior to trial, the Commonwealth did not provide counsel for petitioner with a copy of the agreement. *See* Affidavit of R. Donald Ford, Esquire, attached hereto.

410. Notwithstanding the prosecution's representations that the plea agreement was breached and, therefore, void, the only evidence on the point was the testimony of Cruse which came in through improperly

leading questions offered by Von Schuch. There is nothing in the record or in counsel's files to suggest or confirm that the plea agreement between Cruse and the Commonwealth had ever been rescinded, cancelled or terminated. There was never any suggestion nor is there any evidence of any assertion by the Commonwealth, Cruse, Cruse's lawyers or any law enforcement official that the original agreement, as written, notwithstanding its rough form, did not constitute a valid plea agreement.

411. The failure to produce the plea agreement left counsel with the impression that any plea agreement with Cruse was oral in nature. An agreement in writing certainly has more evidentiary value than an oral one. In this case, that assertion is particularly true given the fact that the jury was wrongfully lead to believe that the agreement was torn up after Cruse failed to mention the rape of Mrs. Keller in an earlier statement to law enforcement officers.

412. More importantly, the fact that the agreement was in writing and contained specific terms would have given counsel far more to work with in his examination of Cruse. The agreement provided the basis for some hope of benefit on the part of Cruse. Given the fact that his failure to mention the rape was not technically a breach of the agreement, the agreement remained a memorial to Cruse's hope of benefit for his testimony. Upon information and belief, Cruse did meet with Commonwealth's Attorneys after the alleged breach of the plea agreement.



413. A written plea agreement with a co-defendant who testifies for a lesser sentence is undeniably exculpatory. *See Brady v. Maryland*, 373 U.S. 83 (1963); *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988) cert. denied. 489 U.S. 1033 (1989).

414. This error violated petitioner's rights guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 1, 8, and 11 of the Virginia Constitution. The Commonwealth's failure to produce this evidence undermines confidence in the outcome of the trial. Timely disclosure of the relevant evidence would have made a life sentence more reasonably probable. *United States v. Bagley*, 473 U.S. 667 (1985).

### B. THE COMMONWEALTH ALLOWED JEFFERY CRUSE TO MISREPRESENT THE NATURE AND EXTENT OF HIS CONTACTS WITH THE COMMONWEALTH'S ATTORNEYS PRIOR TO PETITIONER'S TRIAL

415. During cross-examination of Cruse, counsel for petitioner questioned the reason why Cruse was testifying. Mr. Cruse alleged that there was no deal for his testimony. The following exchange occurred:

> Q. AND YOU ARE SAYING, OR YOU ARE TELLING THE JURY, THAT THERE'S NO DEAL FOR YOUR TESTIMONY NOW?
>
> A. NO, THERE IS NOT.
>
> Q. THAT YOU JUST STAND THERE WITH A CAPITAL MURDER CHARGE AND THE ULTIMATE PENALTY AS DEATH?

A. THAT'S RIGHT.

Q. AND YOU ARE HERE ON THE STAND TODAY TO HELP YOURSELF MAKE YOUR CASE?

A. I AM GETTING IT OFF MY CHEST.

Q. YOU ARE GETTING IT OFF YOUR CHEST, BUT YOU ARE ALSO GETTING THE DEATH PENALTY OFF YOUR BACK, AREN'T YOU?

A. NOT REALLY.

Q. HAVE YOU TALKED WITH THE COMMONWEALTH'S ATTORNEYS ABOUT YOUR TESTIMONY?

A. WHAT DO YOU MEAN BY THAT?

Q. EITHER ONE OF THEM?

A. I AM SORRY? WHAT DO YOU MEAN BY THAT?

Q. IT IS JUST A SIMPLE QUESTION? HAVE YOU TALKED WITH THEM ABOUT YOUR TESTIMONY? HAVE YOU DISCUSSED WITH EITHER MR. WOODSON OR MR. VON SCHUCH WHAT YOU ARE TO TESTIFY TO TODAY? HAVE THEY GONE OVER YOUR STATEMENTS WITH YOU?

A. I WENT OVER IT WITH MY LAWYERS.

Q. WITH YOUR LAWYERS. HOW MANY TIMES HAVE YOU GONE OVER?

A. I AM NOT SURE.

416. This testimony was, at the very least, an incomplete statement and a misrepresentation as to the nature and extent of his contacts with attorneys prior to trial.



The Commonwealth Attorneys surely knew, having meet [sic] with Cruse just before trial to prepare him for trial, that Cruse had not been fully responsive and truthful. Had Von Schuch represented this to the Court, Cruse's testimony could have been called into question as being incomplete or self-serving as was his first statement when he omitted reference to the rape. As such, it was exculpatory. Failure to disclose this exculpatory evidence requires a new trial on the sentencing phase. *See Brady v. Maryland*, 373 U.S. 83 (1963); *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988) cert. denied. 489 U.S. 1033 (1989).

417. The suppression of this evidence regarding the nature and extent of Cruse's contacts with Commonwealth Attorneys just before trial resulted in prejudice to the petitioner. Upon information and belief, either one or both Commonwealths attorneys meet [sic] with Cruse to discuss his testimony and to show him the layout of the courtroom. Implicit in these meetings is a spirit of cooperation which suggests some agreement between the Commonwealth and Jeffery Cruse. At the very least, the number, nature and extent of the meetings suggested a willingness on the part of the Commonwealth to offer some consideration and an expectation on the part of Cruse to receive some benefit as a result of his testimony against the petitioner.

418. Moreover, the Commonwealth's failure to reveal Cruse's omission and misrepresentation was intentionally designed to mislead the jury. Disclosure of that evidence would have made a different verdict or a sentence reasonably probable. *United States v. Bagley*, 473 U.S. 667 (1985). Such conduct on behalf of the Commonwealth violated petitioner's rights guaranteed by the sixth,

eighth and fourteenth amendments to the United States Constitution.

### C. COMMONWEALTH FAILED TO REVEAL THAT THERE WAS, IN FACT, AN AGREEMENT WHICH WOULD PROVIDE CRUSE FOR A LIFE SENTENCE IF HE TESTIFIED AGAINST THE PETITIONER

419. After the petitioner's trial and formal sentencing hearing in which the trial court affirmed the verdicts of the jury, Jeffery Alan Cruse entered pleas of guilty to capital murder. At a subsequent sentencing hearing before the same trial judge, the court imposed life sentences on Jeffery Cruse for his involvement in the rape, robberies and murders of Mr. and Mrs. Keller.

420. Upon information and belief, Cruse entered his guilty pleas on a date which originally was scheduled for the purpose of hearing pretrial motions. Upon information and belief, no date was ever set for the trial of the charges against Cruse.

421. The proceedings on the guilty pleas and sentencing of Cruse transcribed. Counsel made an attempt to listen to said tapes but could not do so given the speed at which the tapes were originally recorded. Counsel has made arrangements to have the tapes transcribed and asks this court to accept the transcription of the proceedings as an exhibit hereto. Upon information and belief, the Commonwealth justified its recommendation of a life sentence for Cruse in part on his cooperation with the Commonwealth and his testimony against the petitioner. Upon Information and belief, the Commonwealth also



based its recommendation of a life sentence on Cruse in part on the "feelings of the family members of the victims, it being their feeling that the petitioner was more culpable.

422. The only evidence that petitioner was more culpable than Cruse came from Cruse himself. While the jury has a right to resolve matters of creditability against the petitioner, no one can say that Cruse was telling the truth. All that can be said in justification and affirmance of the verdicts was that Cruse was more credible than the petitioner. As Commonwealth's attorney, Von Schuch acknowledged in his closing argument at the guilt/innocence phase of the trial,

> Mr. Cruse came down the first time, when he wanted to talk, when he told us, when we had no choice but to enter into that agreement because anything he said we were going to charge him with, because we didn't have any other way of charging him and he did not tell about the rape and Mr. Woodson went back and tore up the agreement. R. 1277, 78.

423. It is critically important for this court to remember that nowhere in the record or in counsel's file is there any suggestion, indication or evidence that Jeffery Cruse was ever administered a polygraph examination to corroborate his story. Given that omission and the Commonwealth's problems in bringing charges, it chose to forge the relationship with Jeffery Cruse which resulted in a plea agreement.

424. There is certainly no basis in the record, including all the testimony heard at the petitioner's trial, to suggest that there is independent evidence which makes

petitioner more culpable than Cruse. In fact, Cruse acknowledged leading Mrs. Keller to the bedroom notwithstanding his assertion that it was petitioner's suggestion to rape Mrs. Keller.

425. As has been argued herein, Cruse's testimony against the petitioner was only self-proving. Because the jury chose to believe Cruse, Cruse got a life sentence. To suggest that there was no agreement at the time Cruse took the stand flies in the face of reason, the facts of this case and, most importantly, the argument of the Commonwealth's attorney. No one tore up that plea agreement, as Mr. Von Schuch asserted. There was no written rescission or termination of that agreement. If there had been, it would have most certainly been introduced into evidence instead of the Commonwealth's improper leading questioning on redirect examination of Cruse.

426. The Commonwealth's failure to provide counsel with a copy of the plea agreement and their failure to bring to the attention of court and counsel, the omission and misrepresentation of Cruse regarding the nature and extent of his meetings with the Commonwealth's Attorney prior to trial or further evidence of continued existence of the plea agreement with Cruse.

427. While counsel has sought to locate and interview Cruse, the Commonwealth has prevented such an interview, refusing to provide counsel with the location of Jeffery Cruse. Counsel has filed a motion for discovery requesting the production of Cruse as well as information leading to the history of his incarceration. Counsel would assert that an evidentiary hearing in which counsel could



examine Cruse would certainly lead to substantial evidence of a continuing plea agreement.

428. In the recent case of *Kyles v. Whitley,* 115 S.C. 1555 (1995), the United States Supreme Court emphasized the cumulative approach which a reviewing court should take in assessing the materiality of evidence and information required by *Brady v. Maryland,* 373 U.S. 83 (1963). The "touch stone of materiality" is whether the defendant received a fair trial resulting in a verdict worthy of confidence. 115 S.C. at 1566. Evidence becomes material when it becomes reasonably probable that its suppression will effect the result of the trial. A different verdict is reasonably probable when the states' suppression undermines the confidence in the outcome of the trial. *Bagley, supra.* at 678.

429. *Kyles,* requires prosecutors to disclosed both requested and unrequested favorable evidence "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different". 115 S.C. at 1565 (citing *Bagley, supra.* 682) The Supreme Court specifically rejected the suggestion that prosecutors should be held to some lesser standard because of the difficulty of such an evaluation. The court treated the prosecutor's discretionary power as a privilege, not a handicap. 115 S.C. at 1568.

430. Cruse was charged with capital murder before petitioner was. Why was Cruse tried last? There is only one answer to that question. The continued existence of the plea agreement was not only evidence which was suppressed, it provided the basis for the prosecutor's

cumulative approach to the production of favorable and exculpatory evidence.

431. This Court's duty to search for constitutional error is enhanced because the petitioner faces capital punishment. *Burger v. Kemp*, 483 U.S. 776 (1986).

432. The prejudice to the petitioner is clear. Given the prosecutorial misconduct in failing to provide favorable and exculpatory evidence, the Commonwealth violated petitioner's right as guaranteed by the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

* * *

**B. THERE IS EVIDENCE TO SUGGEST THAT THE PETITIONER WAS DEPRIVED A FAIR TRIAL AS A RESULT OF THE INTRODUCTION OF EXTRINSIC EVIDENCE.**

443. After the capital trial had been completed and while petitioner's direct appeal was pending, trial counsel learned for the first time that one of the jurors, Blanton, was married to a state trooper who had arrested petitioner on several occasions. Trial counsel made a motion to remand the case for a hearing into possible juror misconduct and to hold the appeal in abeyance pending the outcome of the hearing. The Commonwealth opposed this motion, the motion was denied, and the conviction was affirmed on direct appeal. Petitioner again seeks remand to the Circuit Court for a hearing on possible Juror misconduct based on these same facts.



444. A fundamental requirement of a fair trial is that a jury's verdict must be based on evidence received in open court pursuant to the rules of evidence and subject to the test of cross-examination. *See Smith v. Phillips*, 455 U.S. 209, 217 (1982), *Sheppard v. Maxwell*, 384 U.S. 333, 351 (1966). Extrinsic evidence, evidence that has not been subject to procedural protections, threatens such constitutional safeguards as the defendant's right of confrontation, of cross-examination, and of counsel. *Turner v. State of Louisiana*, 379 U.S. 466, 473 (1965). "The testing a criminal case is not whether the jurors were actually prejudiced by the extraneous matter, but whether they might have been so prejudiced. If they might have been prejudiced, then the purity of the verdict is open to serious doubt and the verdict should be set aside and a new trial awarded." *Thompson v. Commonwealth*, 247 S.E. 2d 707, 715 (Va.1951).

445. A hearing must be ordered to determine whether extrinsic evidence was improperly introduced into the deliberations at the guilt and sentencing phases of petitioners' trial, During voir dire, one of the prospective jurors stated that her husband was a state trooper and asserted that this would have no bearing on her decision in petitioner's case. (Voir dire at 174). She further stated that her husband did not discuss the details of his criminal investigations such as the subjects of his investigations. In response to the questions, she stated that she had known petitioner as a child, that she remembered his mother and had last seen her about three years ago. The juror stated that she did not recognize Williams at the time of trial as the little boy she had know [sic]. (*Id.*

at 181). The juror did not admit to any knowledge about petitioner's prior criminal record during voir dire.

446. However, the members of the jury were not immediately sequestered after jury selection was completed but were permitted to return home for the evening. (*Id.* at 299). Once the trial began the following day, the jurors were sequestered for the length of the trial. Thus juror Blanton had an opportunity to discuss the upcoming trial and to learn of petitioner's prior record from her husband. Given the husband's prior involvement with petitioner, it is highly probable that he made some observation on petitioner's past record when told that his wife had been selected for this highly publicized trial. As a law enforcement official, he would have been well-aware that petitioner had been charged not only with the murders of the Kellers but with four additional murders in a neighboring county. The receipt of any such outside information would mandate the juror's disqualification from the trial, and, if communicated to any other jurors, would have impermissibly tainted those jurors as well. Thus, a hearing is required to determine whether this juror received any extrinsic evidence about petitioner prior to rendering her verdict in this case. *See Robertson v. Metropolitan Washington Airport Authority*, 452 S.E. 2d 845, 847 (1995) ("[I]f [juror] misconduct is discovered after the jury is discharged and the allegations are sufficient to require investigation, a trial court abuses its discretion in ruling upon a motion for a mistrial without investigating the alleged misconduct to ascertain whether it prejudiced the case").

447. It is well-established that the introduction of extrinsic evidence is improper. *Brittle v. Commonwealth*,



281 S.E. 2d 889, 890 (Va. 1981). In *Harris v. Commonwealth*, 408 S.E. 2d 599 (Va. App. 1991), a juror injected his personal knowledge and experience concerning the operation of the parole system and the effect of parole on various sentences being considered by the jury. In *Evans-Smith v. Commonwealth*, 361 S.E. 2d 436, 445 (Va. App. 1987), a juror had consulted an almanac outside the jury room and then discussed his findings with the other jurors during deliberations. In *Thompson v. Commonwealth*, 70 S.E. 2d 284 (Va. 1952), a member of the jury panel had been a victim of the defendant, who had stolen his car, sometime before the trial. The prospective juror shared these facts with others on the panel before he was dismissed. The conviction was reversed on this basis for "the information was given to the jurors in an improper manner and no effort was made to ascertain what effect it had upon them." *Id.* at 290.

448. The error present in all these cases – the introduction of extrinsic material facts – may have occurred in petitioner's case based on information conveyed to juror Blanton. Petitioner's rights to confrontation, a fair trial, and due process as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution as well as rights under the Virginia Constitution may have been compromised. Petitioner requests a hearing on this issue and an opportunity to conduct investigation and discovery prior to such hearing.

## CONCLUSION

WHEREFORE, petitioner Michael Wayne Williams, prays that this Court grant him relief as follows.

1. Issue a Writ of Habeas Corpus commanding respondent to bring petitioner before the Court so that he may be released from his unconstitutional confinement and/or be relieved of his unconstitutional sentence of death.

2. Conduct a plenary hearing on this Petition and grant the right to present witnesses, exhibits and argument as appropriate.

3. Grant Petitioner the right to conduct discovery and subpoena witnesses *in forma* pauperis.

4. Grant Petitioner leave to amend this Petition as necessary to meet the needs of justice in light of any facts uncovered by the response of the Commonwealth hereto or of discovery or testimony.

5. Grant Petitioner the funds to retain experts in connection with this Petition and any proceedings related hereto.

6. Grant Petitioner a reasonable period of time after the completion of the plenary hearing in which to brief issues of law and fact that are raised herein.

7. Grant Petitioner such other relief as to which he may be entitled by law or which are required by the ends of justice.

MICHAEL WAYNE WILLIAMS

By /s/ Eric D. White
Eric D. White

[Certificate Of Service Omitted In Printing]

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## LIST OF ATTACHMENTS

**EXHIBITS**

Affidavit of Michael Wayne Williams

Affidavit of Robert Hart, Ph.D.

Affidavit of Donald C. Blessing, Esquire

Affidavit of R. Donald Ford, Jr., Esquire

Affidavit of Lucretia A. Carrico, Esquire

Notes of Counsel from Interviews with Michael Wayne Williams (2 pages)

Transcript of testimony from hearing of March 14, 1994, Commonwealth of Virginia v. Jeffrey Alan Cruse, Case No.: F-144

Transcript of testimony from hearing April 26, 1994, Commonwealth of Virginia v. Jeffrey Alan Cruse, Case No.: F-144

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IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

MICHAEL WAYNE WILLIAMS,

Petitioner,

v.

WARDEN, MECKLENBURG CORRECTIONAL CENTER,

Respondent.

**AFFIDAVIT**

Donald C. Blessing, Esquire, after being duly sworn, hereby deposes and states:

1. I am an attorney licensed to practice in the Commonwealth of Virginia.

2. I have represented two defendants charged with capital murder in Virginia prior to my representation of Jeffrey Allen Cruse.

3. I was appointed, along with Lee Randolph Harrison, to represent Jeffrey Allen Cruse on capital murder charges pending in Cumberland County in 1993.

4. Pursuant to my representation of Mr. Cruse, I became aware of an agreement between Mr. Cruse, his attorney at that time, James Baber and the Commonwealth's Attorney, Robert Woodson.

5. To the best of my knowledge, Mr. Cruse was never administered a polygraph examination.



6. The foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Donald C. Blessing
DONALD C. BLESSING,
ESQUIRE

STATE OF VIRGINIA
~~City~~/County of Prince Edward:

I hereby acknowledge that the foregoing was signed before me this 23rd day of January, 1996, by Donald C. Blessing, Esquire.

My Commission Expires: 10/31/98

/s/ Sharon G. Palmore
Notary Public

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IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

MICHAEL WAYNE WILLIAMS,

Petitioner,

v.

WARDEN, MECKLENBERG CORRECTIONAL CENTER,

Respondent.

**AFFIDAVIT**

R. Donald Ford, Jr., after being duly sworn, hereby deposes and states:

1. I am an attorney licensed to practice in the Commonwealth of Virginia.

2. I was appointed to represent Michael Wayne Williams, as lead counsel, on capital murder charges pending in Cumberland County, Virginia.

3. Prior to my appointment to represent Michael Wayne Williams, I had previous experience in representing defendants on capital murder charges in Virginia.

4. Prior to my appointment, Lucretia Carrico had been appointed to represent Michael Wayne Williams in Cumberland County.

5. I was also appointed to represent Michael Wayne Williams, as lead counsel, on capital murder charges pending in Prince Edward County, Virginia.

6. I was primarily responsible for handling the guilt/innocence phase of the trial in Cumberland County and Lucretia Carrico was primarily responsible for handling the sentencing phase of the trial in Cumberland County.

7. Despite our primary responsibilities we both discussed, and were familiar with, all issues and aspects of the case regarding guilt/innocence and sentencing.

8. I do not recall receiving from the Commonwealth a copy of the commonwealth's Exhibit No. 13, the written plea agreement dated March 2, 1993 between Jeffrey Allen Cruse, James Baber and the Commonwealth's Attorney, Robert Woodson. I was aware prior to trial of the substance of this agreement whereby Mr. Cruse would have been spared the death penalty and that the Commonwealth subsequently revoked the agreement because Mr. Cruse had not told the truth about the rape of the female victim.



9. Prior to the trial of Michael Wayne Williams, I was never advised by the Commonwealth that Mr. Cruse had not taken a polygraph examination.

10. I do recall being told that Mr. Cruse had cooperated with the Commonwealth by meeting with the Commonwealth's Attorney prior to testifying against Michael Wayne Williams on January 6, 1994.

The foregoing is true and correct to the best of my knowledge, information and belief.

/s/ R. Donald Ford, Jr.
R. Donald Ford, Jr.

STATE OF VIRGINIA
COUNTY OF CHESTERFIELD, to-wit:

I hereby acknowledge that the foregoing was signed before me this 26th day of January, 1996, by R. Donald Ford, Jr.

My Commission Expires June 30, 1999

/s/ Illegible
Notary Public

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

MICHAEL WAYNE WILLIAMS,

Petitioner,

v.

WARDEN, MECKLENBURG CORRECTIONAL CENTER,

Respondent.

**AFFIDAVIT**

Lucretia A. Carrico, Esquire, after being duly sworn, hereby deposes and states:

1. I am an attorney licensed to practice in the Commonwealth of Virginia.

2. In 1993, I was appointed to represent Michael Wayne Williams on capital murder charges pending in Cumberland County.

3. Prior to my representation of Michael Wayne Williams, I had never represented a defendant charged with murder or capital murder, although the Public Defender's Office had found my qualifications met the criteria to serve as co-counsel in capital murder cases.

4. Prior to my representation of Michael Wayne Williams, I had never received any training or education in the field of capital litigation. After my appointment to Michael Wayne Williams' case, however, I attended two capital litigation seminars prior to the trial of the matter and lead counsel and I worked closely with the Virginia Capital Case Clearinghouse at Washington and Lee University.



5. Subsequent to my appointment, Robert Donald Ford, Jr., Esquire, was appointed to serve as lead counsel in representation of Michael Wayne Williams.

6. I was also appointed to represent Michael Wayne Williams as co-counsel on capital murder charges pending in Prince Edward County, Virginia.

7. Mr. Ford was primarily responsible for handling the guilt/innocence phase of the trial in Cumberland County and I was primarily responsible for handling the sentencing phase of the trial in Cumberland County.

8. Despite our primary resonsibilities [sic] we both discussed, and were familiar with, all issues and aspects of the case regarding guilt/innocence and sentencing.

8. [sic] Included in my responsibilities were identifying, interviewing and preparing witnesses for the sentencing hearing. Mr. Ford was often present for interviews of these witnesses or reviewed summaries from the interviews.

9. It was also my responsibility to review materials received for use of possible exhibits during the penalty phase.

10. It was also my responsibility to work with Dr. Dewey Cornell who was appointed by the Court to assist the defendant for identification and presentation of mitigation at the penalty phase. Both Mr. Ford and I met with Dr. Cornell to discuss the sentencing phase of the trial and among other things, the presentation of mitigating evidence.

11. While Dr. Cornell discussed with Mr. Ford and me the difficulties experienced by Mr. Williams' mother

during her pregnancy, Dr. Cornell never suggested that a neuropsychiatric or a neuropsychological evaluation or examination may be appropriate given the pregnancy complications and given Dr. Cornell's diagnosis of Mr. Williams as suffering from Attention Deficit Hyperactivity Disorder.

12. At the time I was not familiar with the field of neuropsychiatry or its use in diagnosing organic brain damage or dysfunction, nor was I familiar with the application of neuropsychiatry in the field of mitigation and litigation.

13. If Dr. Cornell had suggested that a neuropsychiatric evaluation or examination was needed, I would have moved the Court for appointment of a neuropsychiatrist as an expert necessary to investigate the existence of another mitigating factor.

The foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Lucretia A. Carrico
LUCRETIA A. CARRICO

SUBSCRIBED AND SWORN TO before me this 25th day of January, 1996, by Lucretia A. Carrico, Esquire.

/s/ Illegible
Notary Public

My commission expires: 3/31/96

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[1] VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF CUMBERLAND

| | |
|---|---|
| COMMONWEALTH OF VIRGINIA | |
| vs. | CASE NO. F-144 |
| JEFFREY ALAN CRUSE | |

Complete transcript of testimony and other incidents in the above, when heard on March 14, 1994, before the Honorable J. R. Snoddy, Judge.

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

[2] APPEARANCES:

ROBERT G. WOODSON, JR.
Commonwealth's Attorney
for the County of Cumberland
Cumberland, Virginia 23040

WARREN VON SCHUCH
Assistant Commonwealth's Attorney
for the County of Chesterfield
Chesterfield, Virginia 23832

DONALD C. BLESSING
215 North Main Street
Farmville, Virginia 23901
Counsel for the Defendant, Jeffrey A. Cruse.

LEE R. HARRISON
P.O. Box 32
Cartersville, Virginia 23027
Counsel for the Defendant, Jeffrey A. Cruse.

* * *

[8] THE COURT:

* * *

Stand up, sir. State your full name.

THE DEFENDANT: Jeffrey Alan Cruse.

THE COURT: And when were you born, Mr. Cruse.

THE DEFENDANT: 12-22-67.

THE COURT: And I believe you understand there are certain charges against you that are set for hearing today?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Blessing and Mr. Harrison have been representing you since the beginning of this matter. With their [9] advice and counsel, are you ready for a hearing today?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Arraign the accused.

THE CLERK: Jeffrey Alan Cruse, you stand indicted for the following charges: Virginia, County of Cumberland, to wit: in the Circuit Court of the said



County, the grand jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said court for the said county upon their oaths present that Jeffrey Alan Cruse on or about the 27th day of February, in the year 1993, in the said County, and within the jurisdiction of the said court and within, one year prior to the finding of this indictment, did unlawfully and feloniously rob Morris C. Keller, Jr. of money, guns, VCR, television, microwave, various jewelry and other tangible personal property in violation of Section 18.2-58 of the Code of Virginia, 1950, as amended against the peace and dignity of the [10] Commonwealth of Virginia.

Are you guilty or not guilty?

THE DEFENDANT: Guilty.

THE CLERK: Virginia, County of Cumberland, to wit: in the circuit court of the said county, the grand jurors of the Commonwealth of Virginia in and for the body of the County of Cumberland, duly summoned to attend said court for the said county upon their oaths present that Jeffrey Alan Cruse on or about the 27th day of February in the year 1993, in the said county and within the jurisdiction of said court, and within one year prior to the finding of this indictment, did unlawfully and feloniously rape Mary Elizabeth Keller in violation of Section 18.2-61 of the Code of Virginia, 1950, as amended, against the peace and dignity of the Commonwealth of Virginia.

Are you guilty or not guilty?

THE DEFENDANT: Guilty.

MR. WOODSON: Your Honor, we have a motion to amend the next indictment that the Clerk is going to read. Would you like [11] to mark on there –

THE COURT: What is the next?

MR. WOODSON: The first degree murder, Your Honor, of Mr. Keller.

THE COURT: Come up and amend it.

MR. WOODSON: Your Honor, we are not changing the charge. It remains first degree murder. We are simply going to add the words, did as a principal in the second degree. The punishment remains the same up to a life sentence.

THE COURT: You all understand that the punishment is the same.

MR. BLESSING: Yes, Your Honor. We understand that as does Mr. Cruse, that he is still being charged with first degree murder, and we have all affixed our initials to the amendment, Mr. Harrison and myself, and Mr. Cruse.

THE COURT: All right. So.

THE CLERK: Virginia, County of Cumberland, to wit: in the circuit court of the said county, the grand jurors of the Commonwealth of Virginia in and for the body of the County of Cumberland, duly [12] summoned to attend said court for the said county, upon their oaths present that Jeffrey Alan Cruse on or about the 27th day of February, in the year 1993, in the said county and within the jurisdiction of said court, and within one year prior to the finding of this indictment, did as a principal



in the second degree feloniously kill and murder Morris C. Keller, Jr., in violation of Section 18.2-32, of the Code of Virginia, 1950, as amended, against the peace and dignity of the Commonwealth of Virginia. Are you guilty or not guilty?

THE DEFENDANT: Guilty.

THE CLERK: Virginia, County of Cumberland, to wit: in the circuit court of the said county the grand jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said court for the said county, upon their oaths present that Jeffrey Alan Cruse, on or about the 27th day of February, in the year 1993, in the said county and within the jurisdiction of [13] said court, and within one year prior to the finding of this indictment, did willfully, deliberately and with premeditation, feloniously kill and murder Mary Elizabeth Keller, subsequent to raping Mary Elizabeth Keller, in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended, against the peace and dignity of the Commonwealth of Virginia. Are you guilty or not guilty?

THE DEFENDANT: Guilty.

THE CLERK: Virginia, County of Cumberland, to wit: in the circuit court of the said county, the grand jurors Commonwealth of Virginia in and for the body of the County of Cumberland, duly summoned to attend said court for the said county, upon their oaths present that Jeffrey Alan Cruse, on or about the 27th day of February, in the year 1993, in the said county and within the jurisdiction of the said court, and within one year prior to the finding of this indictment, did unlawfully,

feloniously and maliciously in the nighttime burn the dwelling house of [14] Morris C. Keller, Jr., in which Morris C. Keller, Jr., and his wife, Mary Elizabeth Keller, usually dwelled, in violation of Section 18.2-77 of the Code of Virginia, 1950, as amended against the peace and dignity of the Commonwealth of Virginia.

Are you guilty or not guilty?

THE DEFENDANT: Guilty.

MR. WOODSON: Your Honor, we would move to nol pros all the remaining charges, based on the pleas to these five charges.

THE COURT: I take it you all have no objection to that?

MR. BLESSING: No, sir, Your Honor.

MR. HARRISON: No, sir, Your Honor.

THE COURT: The Court allows it. Nol pros on the remainder of the charges.

MR. WOODSON: Your Honor, if I might. I understand before you can accept the guilty pleas, you must ask certain questions.

THE COURT: I understand.

[15] MR. WOODSON: As it is your manner, custom and often desire, I have prepared those questions in writing so you may file them with the record, although we understand that you will still ask them personally of Mr. Cruse. May I tendered those?

THE COURT: Yes, please. Now you recall going over certain questions here with your attorneys?



THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And you answered these questions. Are they the truth, so help you God?

THE DEFENDANT: Yes, sir.

THE COURT: They will be filed along with the record in this case. Now before I can accept your pleas of guilty on these charges, there are certain questions I have to ask you, similar to the ones that you have answered, but first, what is your full name?

THE DEFENDANT: Jeffrey Alan Cruse.

[16] THE COURT: Secondly, what is your date of birth?

THE DEFENDANT: 12-22-67.

THE COURT: What was the last grade in school that you completed?

THE DEFENDANT: Eighth grade.

THE COURT: What other education have you received since then?

THE DEFENDANT: None.

THE COURT: Are you the person charged in the indictments that have just been read?

THE DEFENDANT: Yes, sir.

THE COURT: Do you fully understand the charges against you?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed these charges and their elements with your lawyers, and you understand what the Commonwealth must prove before you can be found guilty on these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had enough time to discuss with your lawyers any possible defenses which you may have in [17] these charges?

THE DEFENDANT: Yes, Sir.

THE COURT: After this discussion, did you decide for yourself that you should plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Are you entering a plea of guilty because you are, in fact, guilty of the crimes charged?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have, do you understand that by pleading guilty, you are not entitled to a trial by jury?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that by pleading guilty you may waive your right not to incriminate yourself?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that by pleading guilty you waive your right to confront and cross-examine your accusers?



THE DEFENDANT: Yes, sir.

THE COURT: Do you understand – Let's see. You are not on parole or [18] anything at the present time, are you?

THE DEFENDANT: No, sir.

THE COURT: Has anyone connected with your arrest and prosecution, such as the police or the Commonwealth's Attorney or any other person, in any manner threatened you or forced you to enter the plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Have you received any promises concerning your plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Do you understand that the maximum punishment for these crimes is as to the capital murder charge on Mrs. Keller carries the death penalty?

THE DEFENDANT: Yes, sir.

THE COURT: And that the other charges against you all carry life imprisonment, up to life imprisonment.

THE DEFENDANT: Yes, sir.

THE COURT: I mean up to that on all of these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Now, are you entirely [19] satisfied with the services of your, of Mr. Blessing and Mr. Harrison as your attorneys.

THE DEFENDANT: Yes, sir, I am.

THE COURT: You understand that by pleading guilty, you may waive any right to appeal the decision of this court?

THE DEFENDANT: Sure am.

THE COURT: Have you entered – And we have already gone over the guilty plea form. You have read that and the answers are true?

THE DEFENDANT: Yes, sir.

THE COURT: Have you entered into any plea agreement with the Commonwealth?

THE DEFENDANT: No, sir.

THE COURT: Do you understand all of the questions that I have asked?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions to ask the Court?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Do you have anything to say?

[20] THE DEFENDANT: No, sir.

THE COURT: The Court finds that your pleas of guilty were made freely, intelligently and voluntarily with an understanding of the nature of the charges and



the consequences of the pleas and accepts your pleas at this time.

You may be seated.

MR. VON SCHUCH: Judge, this Court sat in and heard the trial and the evidence in the trial of the codefendant, Mr. Michael Wayne Williams. During that trial this defendant, Mr. Jeffrey Cruse, testified if the Court will recall. We would ask the Court to incorporate by reference not only the defendant's testimony in that case, but the evidence in that case in considering the substantial elements, or the significant elements of these offenses.

In addition to that, Judge, all parties have entered into a stipulation which we would, have signed and would give to the Court. I will read it to the Court at this time. The stipulation would be, [21] the defendant, the attorneys for the defendant, and the attorneys for the Commonwealth, would stipulate that the defendant within the County of Cumberland on the 27th day of February, 1993, did commit the following offenses: number one, willfully, deliberately and with premeditation feloniously kill and murder Mary Elizabeth Keller subsequent to raping Mary Elizabeth Keller, in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended; number two, that the defendant did feloniously kill and murder Morris C. Keller, Jr., in violation of Section 18.2-32 of the Code of Virginia, 1950, as amended, as a principal in the second degree; number three, unlawfully and feloniously rape Mary Elizabeth Keller in violation of Section 18.2-61 of the Code of Virginia, 1950, as amended; number four, unlawfully, feloniously and

maliciously in the nighttime burn the dwelling house of Morris C. Keller, Jr., in which Morris C. Keller, Jr., and his wife, Mary Elizabeth Keller, usually dwelled, in violation of [22] Section 18.2-77 of the Code of Virginia, 1950, as amended; and finally, number five, unlawfully and feloniously rob Morris C. Keller, Jr. of money, guns, VCR, television, microwave, various jewelry and other tangible personal property in violation of Section 18.2-58 of the Code of Virginia, 1950, as amended.

Judge, this stipulation has been signed by all the attorneys and the defendant, Mr. Cruse, in this case. We would offer that as Commonwealth's Exhibit No. 1 in the case of Jeffrey Cruse and ask the Court to accept also the stipulation on the incorporation by reference of the evidence in the Michael Williams case.

THE COURT: Do you all agree that that would be the evidence that the Commonwealth placed upon the record and the Court?

MR. BLESSING: Yes, Your Honor.

We agree with the stipulation.

THE COURT: Do you agree?

THE DEFENDANT: Yes, sir.

THE COURT: Do you agree?

[23] MR. HARRISON: Yes, sir, Your Honor.

THE COURT: So stipulated.

NOTE: The above-referred-to documents were marked and filed as Commonwealth Exhibit No. 1.



MR. VON SCHUCH: That would be the Commonwealth's evidence in chief.

THE COURT: Do you all have any evidence or anything?

MR. BLESSING: No, sir.

MR. HARRISON: No, sir, Your Honor.

MR. BLESSING: But we would like to make a motion after you pronounce sentence.

THE COURT: All right. Do you have anything to say before the Court pronounces judgment?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Based upon your pleas of guilty, upon the stipulation of facts as [24] agreed to by you, your attorneys and the Commonwealth's Attorneys, I find as a matter of fact and a matter of law that you are guilty as charged in that you did on or about the 27th day of February, 1993, in Cumberland County, willfully, deliberately and with premeditation feloniously kill and murder Mary Elizabeth Keller subsequent to raping Mary Elizabeth Keller in violation of Section 18.2-31(5) of the 1950 Code of Virginia as amended.

I find as a matter of fact and as a matter of law that you are guilty as charged in that you did on or about February the 27, 1993, in Cumberland County, unlawfully did, as a principal in the second degree, unlawfully, feloniously kill and murder Morris C, Keller, Jr., in violation of Section 18.2-32 of the 1950 Code of Virginia as amended.

I find as a matter of fact and as a matter of law that you are guilty as charged in that you did on or about February the 27th, 1993, in Cumberland County, unlawfully, feloniously rape Mary [25] Elizabeth Keller in violation of Section 18.2-61 of the 1950 Code of Virginia as amended.

I find as a matter of fact and as a matter of law that you are guilty as charged in that you did on or about February the 27th, 1993, in Cumberland County unlawfully, feloniously and maliciously in the nighttime, burn the dwelling house of Morris C. Keller, Jr., in which Morris C. Keller, Jr. and his wife Mary Elizabeth Keller, usually dwelled, in violation of Section 18.2-77 of the 1950 Code of Virginia, as amended.

I find as a matter of fact and as a matter of law that you are guilty as charged in that you did on or about February the 27th, 1993, in Cumberland County, unlawfully and feloniously rob Morris C. Keller, Jr., of money, guns, VCR, television, microwave, various jewelry and other tangible personal property, in violation of Section 18.2-58 of the 1950 Code of Virginia as amended.

You maybe seated.

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[1] VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF CUMBERLAND

| | |
|---|---|
| COMMONWEALTH OF VIRGINIA | |
| vs. | CASE NO. F-144 |
| JEFFREY ALAN CRUSE | |

Complete transcript of testimony and other incidents in the above, when heard on April 26, 1994, before the Honorable J. R. Snoddy, Judge.

[3] NOTE: The case is called to be heard as follows:

THE COURT: Good afternoon.

MR. WOODSON: Good afternoon, Judge.

MR. BLESSING: Good afternoon.

MR. HARRISON: Good afternoon, Judge.

MR. VON SCHUCH: Good afternoon, Your Honor.

THE COURT: I believe the matter for this afternoon is a sentencing of Jeffrey Alan Cruse, him having already been tried and a presentence report requested.

Stand up. State your full name, please.

THE DEFENDANT: Jeffrey Alan Cruse.

THE COURT: And when were you born?

THE DEFENDANT: December 22, 1967.

THE COURT: And do you understand [4] what we are here for today, and I take it you all have seen the presentence report as requested?

MR. BLESSING: Yes, sir, Your Honor, we have gone over that.

THE COURT: Have you gone over it with your client?

MR. BLESSING: Yes, sir, we have.

THE COURT: And you all have received your copies, Mr. Woodson?

MR. WOODSON: Yes, sir, Your Honor.

THE COURT: The Court has received it and is well aware of all of the contents. Go ahead and get a first day waiver, anyway. You may be seated.

All right. Gentlemen.

MR. VON SCHUCH: Judge, the Commonwealth has no witnesses at sentencing at this time. We are prepared to make a closing argument.

MR. BLESSING: Your Honor, if I might just to make certain that everything is properly before the Court. We have agreed with the Commonwealth to stipulate [5] the presentence report. We have agreed to stipulate the supplement to the presentence, report, which is the psychological information that was late getting to the probation officer. The probation officer told us that there would be a delay in coming and supplemented that in the letter.



THE COURT: Well, I don't think I have received that, the psychological.

MR. BLESSING: I certainly have a copy of it that I might tender to the Court. Do you have that?

THE COURT: Let's take a five minute –

MR. BLESSING: Your Honor, additionally, before we do that?

THE COURT: Go ahead and do it.

MR. BLESSING: We had asked the Commonwealth, and I am under the impression that the Commonwealth would also stipulate to this letter from James Innis, who is the Commonwealth's Attorney in Prince Edward County relating to some activities and cooperation that Mr. Cruse provided to Prince Edward County.

[6] MR. VON SCHUCH: We would stipulate to those facts.

THE COURT: You might have mailed it to Buckingham. I have been everywhere but there for the last week and a half.

You have no evidence that you want to put on at this time?

MR. BLESSING: No, Your Honor.

MR. VON SCHUCH: Judge, may it please the Court. We are here today to sentence Mr. Cruse for the involvement that he had in the rape, double homicide of the Kellers here in Cumberland County.

Judge, as the Court well knows, Mr. Williams, his codefendant was tried with a jury and received a death

sentence for his involvement in these crimes, and I am here to make a recommendation based on certain things that I see in this case to the Court at this time.

I think that I pointed out to the jury when we tried Michael Williams that I had initially noticed some distinction between Mr. Cruse and Mr. Williams, both personally, and in their conduct at the [7] crime, and as individuals. First of all, I think Mr. Cruse is aware, and I think the Court is aware, that he did cooperate with the Commonwealth. In fact, one of the differences between Mr. Cruse and Mr. Williams is that Mr. Cruse, when he was apprehended not only made a complete confession of everything but the rape to the police officers involved, but he also took the police to the Rappahannock River within days of his arrest. As a result of that, we recovered the .357 magnum which was used to kill the four people in Prince Edward County. We would never have had that and that case never would have been cleared if Jeffrey Cruse had not, on his own, taken us to the river and pointed that weapon out and enabled us to recover it.

He also testified against Michael Williams in the case in chief, giving us the elements that we needed to prove capital murder. And he also cooperated with and testified for Mr. Anderson in Farmville in the murder of the four people in Prince Edward County.

[8] He has cooperated with the Commonwealth, and he has done so from the beginning, and that is certainly substantially different than Mr. Williams and Mr. Williams's attitude towards the Commonwealth and his flight to Georgia when he realized that he was about to be arrest [sic]. Judge, beyond that I noted that Mr. Cruse has



virtually limited, no prior criminal record. I think we have an unauthorized use, which may have been a misdemeanor, and he has some traffic record, but there is no history, no record of prior violent conduct in his background, certainly nothing of this sort.

The Court will recall before Michael Williams came into Cumberland County and murdered the Kellers and murdered four people in Prince Edward County, there is a vast distinction in the background of these two individuals. And I would represent to the Court based upon what I know, that Jeffrey Cruse, and I don't think anyone in the world knows this better than Jeffrey Cruse, that if he had [9] never met Michael Williams, he wouldn't be here today, and I think it is that simple.

Judge, I have also noticed the differences between Mr. Cruse and Mr. Williams in one other area, and that is that I don't think I have ever dealt with anyone in all the years I have been prosecuting who has legitimately, as far as I can tell, has been bothered by what he did. I noted that as we talked to him, he had a very difficult time talking about it. And I think I had him describe to the jury during the Williams case one instant where I took the pictures out to try and get him to identify certain locations for me as to what happened at what point in time. And he literally broke down in front of all of us for approximately 15 minutes and was totally out of it in tears and hysterical crying.

He has complained from the beginning, and I think probably the one thing that stood out in my mind when I showed him the pictures, he said, I don't need to look at that. He said I see that [10] every night when I go to bed.

I believe that he probably will for some time to come for the rest of his life.

I think that we also are dealing with, a young man who has, because of the depression, not only over his future, but over what he has done, has legitimately attempted a suicide, which he nearly succeeded at, and I think that is indicative of the fact that he has some feelings and some conscious and some real depression and some recognition of what he did was wrong, which is a starting place, which we don't have with Michael Williams. I believe that he is suffering as much, and probably at this point, more than Michael Williams who has already been sentenced to death and has that to look forward to in his life.

Judge, I would point out to the Court that because of his background, because of his involvement which was slightly less than Michael Williams, although he is certainly equally culpable, and because of those things that we and [11] Mr. Woodson have noted about him, because of his cooperation with the Commonwealth, we would recommend to the Court that this Court not sentence Mr. Cruse to death at this time. We would make the recommendation that based upon his presentence and those other things I have pointed out, that he would be an appropriate candidate for a life sentence on the charge of capital murder, a life sentence on the charge of the murder of Mr. Keller, and a, on the other three charges, he should receive the same sentence as Mr. Williams, which I believe was life on rape, 40 years on the robbery, and 50 years on arson. And those would be the recommendations that the Commonwealth would make to the Court. I



pointed out the reasons why we would strongly urge the Court to follow the Commonwealth's recommendation.

MR. BLESSING: Your Honor, if I might. As you can well expect, we are joining in and asking the Court to accept the recommendations of the Commonwealth. I [12] point out to you, as I think you are aware, Mr. Cruse has not tried to avoid responsibility. He has owned up to his responsibility in that regard.

What I want to talk to you about is the capital murder charge. We have no qualms, we have no problem, we have no disagreement with the recommendation on the other the charges. It is Mr. Cruse's life which we are concerned about here at this juncture. Much of what I say may reiterate the Commonwealth's statements, but I feel compelled to make them. The factors which support the Court's consideration, and hopefully an award of a life sentence for Mr. Cruse, included his early admission of guilt, in this matter. He was honest and forth coming with everything, with the exception of the rape, and then later he fessed up to that.

He was cooperative. He was cooperative without any promise of anything in exchange for his testimony. He testified twice on that chair in Cumberland County. Once was at the preliminary [13] hearing and the other was before you, Your Honor, in the jury trial. You didn't have the occasion to view him at the preliminary hearing; you did at the trial; and I think it was quite obvious of his emotion and remorse.

Nonetheless, he got through what he had to do to cooperate with the Commonwealth and establish the elements that were necessary to convict Michael Williams of

the offenses that he was convicted of. And ultimately, I would tend to think, it is up to the Court to judge having heard the evidence, that his testimony was substantial in providing some of the evidence, the wherewithal to provide the death sentence for Mr. Williams.

In Prince Edward County, although he was not aware of those offenses, had no participation, didn't know anything about them until some time after the Cumberland offenses, he came forward and cooperated with the Commonwealth's Attorney in Prince Edward County, and you have his letter before you that indicates that he was [14] cooperative, which resulted in the guilty pleas in the four Prince Edward slayings involving Mr. Williams.

THE COURT: I heard those cases, as you know.

MR. BLESSING: It is also important, as the Commonwealth has pointed out to you, that Mr. Cruse cooperated not just to the extent of giving his statement and appearing and giving testimony, but he actually helped to locate the physical evidence which was used in both cases. He went to the scene. I think there was even an instance where one of the divers was having problems locating something. He directed them over to another area, and within moments they found what they were looking for.

Another factor is the type of person that this individual is. Certainly these are terrible actions. We have never stood before you and said that these are something that could be overlooked by the Court. As I said, he has accepted his responsibility, but he has been remorseful [15] in a manifest way. Every time that I have had the opportunity to see him, every time that Mr. Harrison,



every time that the Commonwealth, the officers that work for the Commonwealth, there has always been a point in every conversation where he has either broke down and cried, or has had to take a break, and be to himself. He cried in front of you at the Williams' trial. He has been riddled with guilt for his wrongful actions, which is evidenced not only by his suicide but by the depression that is mentioned, or his attempted suicide, and the depression that is mentioned in the mental health report.

I has also expressed to your probation officer on page 9 of the report, and I quote, I wish I could bring them back, talking about the Kellers. I would do anything if I could make them feel better; I would do anything for their forgiveness.

I suggest that the presentence report and the other items stipulated support a life sentence for Mr. Cruse. [16] They show his cooperativeness. Your Honor, you often read presentence reports. The official version in this report is the same as Mr. Cruse's version. You know, there is always somebody trying to tell you something different. Well, there wasn't any problem getting his version, because it was on the transcript. It was there and you can see it.

His jail adjustment has been relatively good, particularly in Powhatan. Although he prefers to be in segregation, because he is having a hard time handling himself, his guilt, and his depression.

He does not have anything significant in his record. There is no prior offenses like this in his record, whatsoever. The presentence and the psychological reports do

show character flaws, one of which is that he is easily influenced by others. The Commonwealth stated to you had he never met Michael Williams, this would not have happened. I believe that to be so, and I believe there are statements indicative of that in this [17] presentence report.

The psychiatric report goes on to point out that he is significantly depressed. He suffered from post traumatic stress. His symptoms include nightmares, sleeplessness, sobbing, reddening of the face, severe depression, flash backs, nightmares, in particular exactly what Mr. Von Schuch said. Seeing the pictures, he says he sees the pictures coming at him time and time again.

I think the history of this suicide attempt bears out his remorse. He is described as a young man searching for the – in his life, an insatiable need to be accepted and loved.

He was filled with fear of Michael Williams. He did participate and he is culpable, but if you remember, he didn't think anything was going to happen. Williams pointed a gun at him and said you pull your trigger, too.

Again the psychological report states he is overwhelmed by feelings of guilt and shame in his actions. He is [18] numb. He is trying to suppress his feelings, but when he has feelings, there is only pain and sadness. It also says, I believe, that he was the father, expressed my opinion. Born out by other things. He said that if he were in control that night, no one would have been killed. Almost parallels a statement that if he never met Williams, no one would have been killed.



I don't think that there is anything in his record that suggests future dangerousness element, which would be an element that would be considered in awarding the death sentence.

Certainly, Your Honor, in my attempt to try to research the cases that are before the Virginia Supreme Court, I have not been able to find a case where a man with the profile that I have described for Mr. Williams [sic] has been sentenced to death. I tried to do an exhaustive search, and I can't find anything. I may have overlooked something. I think if you contrast him with Mr. Williams, you see two remarkably different persons. A remorseful [19] and cooperative individual sits here. The one who sits on death row is a cold, callous, vicious, vile person who took not just two lives here, but four lives in Prince Edward with a remarkably different prior criminal record.

Your Honor, I certainly feel that Mr. Cruse has, of course, his life ahead of him. Certainly he probably definitely cannot compare to what the Kellers and their relatives experienced and are experiencing. One of two fates await Mr. Cruse' sentence to a life imprisonment. He may well go into the penal institution, as you are probably aware, Your Honor, and he will be known as a snitch. Somebody who testified against somebody. He will always be looking over his shoulder. Or, the other, he may suffer both if it were a life sentence, and that is he suffers from his anguish, his guilt, his depression, continually seeing those pictures that he didn't want Mr. Von Schuch to show him, continually seeing the victims coming at him at night.

[20] Your Honor, Mr. Harrison and I have attempted to represent Mr. Cruse to the best of our abilities. To restate, the only issue I am addressing is not the punishment recommended on the other charges, the robbery, but it's whether death or life should be imposed. In the capital murder charge, You Honor, we would ask that you impose a life sentence. Thank you.

MR. VON SCHUCH: The only thing I wanted to add was that Mr. Woodson and I have met with the families of Morris and Mary Keller about Mr. Cruse on a couple of occasions, and certainly they want him punished to the fullest extent of the law. You can imagine how they, the grief that they have had to bear the last year. But we have talked to them, and they themselves suggested that having seen the trial of Michael Williams, they understand there is a difference between Mr. Cruse and Mr. Williams, and they have no objection, voiced no objection when we suggested that we would make this recommendation because [21] they said they understood those things that went into what we were doing. I wanted the Court to be aware that we had talked with the families of the victims before today about this matter.

THE COURT: Of course, this is always a real burden, nothing like the burden that the families are receiving; because this man has a burden, but he brought that on himself. I can see a difference, there is no question about that, between the two men, having dealt with them over a long period of time now. And I understand what these gentlemen mean when they say that they would not have had, and you would have had a hard time convicting certainly of all of the charges that Mr. Williams was convicted without his testimony. I don't know where you



would have been. But without his testimony, there certainly would not have solved the four murders in Prince Edward. They would not have had the evidence to convict there. I think that's clear.

One of the main things I am [22] taking into consideration is the recommendation of the Commonwealth. Mr. Von Schuch, I guess, has more people on death row than any other prosecutor around, or has had, and it isn't often that he recommends sparing a life. And I don't know that this is sparing a life, because – the punishment that I am going to give. We don't know what the situation will be in the future.

Stand up. Do you have anything to say before the Court decides the punishment that you will receive?

THE DEFENDANT: I would like to tell you and the family of the Kellers that I am sorry that my actions caused so much sorrow, and I know nothing I can say or do will bring them back. And I hope what I have done to assist the Commonwealth brings a measure of relief to the families of Mr. and Mrs. Keller.

THE COURT: I am going to follow the recommendation of the Commonwealth, and I am glad that you talked with the families because I am not sure I would have done [23] this without that.

On the capital murder of Mary Elizabeth Keller subsequent to raping her, I sentence you to life in the Virginia Corrections system.

On the charge of first degree murder of Morris C. Keller, Jr., as a principal in the second degree, I sentence you to life imprisonment.

All of these run consecutively, of course.

On the charge of rape of Mary Elizabeth Keller, I sentence you to life imprisonment.

On the charge of arson of the Keller dwelling, I sentence you to 50 years.

On the sentence of the robbery of Morris C. Keller, Jr., I sentence you to 40 years.

I am sure you won't be released during the lifetime of most of us. That's all.

MR. WOODSON: Thank you, Your Honor.

[24] MR. BLESSING: Thank you, Your Honor.

MR. VON SCHUCH: Thank you.

MR. HARRISON: Thank you, Your Honor.

END OF PROCEEDINGS

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